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FCC Record

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of the Federal Communications Commission
of the United States.**





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

In re Application of	)	
	)	
WPRR, Inc.	)	FRN: 0021763404
	)	
for Consent to Transfer of Control of Station	)	Facility ID No. 121239
WPRR-FM, Clyde Township, Michigan	)	
	)	
from	)	Application File No. 0000244409
	)	
Old Board (Transferor)	)	
	)	
to	)	
	)	
New Board (Transferee)	)	

ORDER

Adopted: October 11, 2024

Released: October 11, 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 WPRR, Inc. (Licensee), licensee of noncommercial educational (NCE) FM station WPRR-FM, Clyde Township, Michigan. The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Application) for a non pro forma transfer of control of Licensee from the old governing board members to the new governing board members.¹

2. In the course of processing the Application, the Bureau staff found that the Licensee entered into a Programming Agreement (Agreement) with a for profit entity (Programmer), which violated section 73.503 of the Commission's rules (Rules), which sets forth licensing and service requirements for noncommercial educational FM broadcast stations.² In particular, section 73.503(d) states, "Each station shall furnish a nonprofit and noncommercial broadcast service," and "No *promotional announcement on behalf of for profit entities* shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees."³ By the terms of the Agreement, Licensee and Programmer agreed that Programmer, a for profit entity, would provide programming material and other goods and services to WPRR-FM, an NCE FM station, solely at Programmer's expense. Also, Licensee and Programmer agreed that Programmer would retain all revenues derived from the programming, including listener contributions and underwriting support. Further, Programmer agreed to reimburse Licensee for a portion of its direct expenses in operating WPRR-FM. The foregoing terms of the Agreement violated section 73.503(d) of the Rules because the Agreement terms provided for the broadcast of promotional material on behalf of a for-profit entity in exchange for consideration to the licensee. On September 24, 2024, the Parties filed an amendment to the

¹ Application File No. 0000244409 (filed May 6, 2024). See *Broadcast Applications*, Public Notice, Report No. PN-1-240508-01, at 2 (MB May 8, 2024).

² See 47 CFR § 503(d).

³ *Id.*

Application confirming that they terminated the Agreement.⁴

3. The Consent Decree concludes the Bureau's investigation of the Licensee's compliance with section 73.503(d) of the Rules.⁵

4. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 73.503(d) of the Rules. The Consent Decree requires that the Licensee adopt a compliance plan to address Station practices which led to the violation of section 73.503(d). A copy of the Consent Decree is attached hereto and incorporated by reference.

5. 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 in connection with the Application.

6. 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 Licensee possesses the basic qualifications to be a Commission licensee.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,⁶ and by the authority delegated by sections 0.61 and 0.283 of the Rules,⁷ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

9. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WPRR, Inc., and to its counsel, Mark Denbo, Counsel, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

10. IT IS FURTHER ORDERED that pursuant to section 73.3527(e)(11) of the Rules,⁸ a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴ Application File No. 0000244409, Attachs., Purpose of Amendment, Termination Agreement.

⁵ 47 CFR § 73.503(d).

⁶ 47 U.S.C. § 4(i).

⁷ 47 CFR §§ 0.61, 0.283.

⁸ *Id.* § 73.3527(e)(11).

**Before the
Federal Communications Commission
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In re Application of	)	
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WPRR, Inc.	)	FRN: 0021763404
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for Consent to Transfer of Control of Station	)	Facility ID No. 121239
WPRR-FM, Clyde Township, Michigan	)	
	)	
from	)	
	)	
Old Board (Transferor)	)	
	)	
to	)	Application File No. 0000244409
	)	
New Board (Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and WPRR, Inc., Licensee of the above-captioned noncommercial educational (NCE) FM station, for the purpose of terminating the Bureau's investigation concerning compliance with section 73.503(d) of the Commission's rules, 47 CFR § 73.503(d).

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 FCC Form 2100, Schedule 315 application for consent to the non pro forma transfer of control of the Licensee from the old governing board members to the new governing board members, Application File No. 0000244409;
 - (d) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;
 - (f) "Licensee" means WPRR, Inc., licensee of station WPRR-FM, Clyde Township, Michigan, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order;
 - (h) "Investigation" means the Bureau's investigation of information contained in the Application, as detailed herein;
 - (i) "Consideration Received Rule" means 47 CFR § 73.503(d);
 - (j) "Consideration" means anything of value provided to the licensee, its principals, or its

employees;

(k) “Parties” means the Licensee and the Bureau;

(l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations;

(m) “Violations” mean the violations of the Consideration Received Rule, 47 CFR § 503(d).

III. BACKGROUND

3. The Consideration Received Rule states, in pertinent part, that:

Each station shall furnish a nonprofit and noncommercial broadcast service. Noncommercial educational FM broadcast stations are subject to the provisions of § 73.1212 to the extent they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others. No *promotional* announcement *on behalf of for profit entities* shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals or its employees.¹

4. Commission precedent has established that “consideration,” as used in the Consideration Received Rule, is a broad term that denotes anything of value provided to the licensee, its principals, or its employees; thus, for purposes of section 73.503(d) of the Rules, “consideration” encompasses the contribution of programming material and funds, goods and/or services used for programming, as well as in kind contributions (e.g., studio equipment) which frees station funds for programming purposes.² Further, the Commission has determined that a noncommercial broadcaster is “precluded from promoting an individual’s or an entity’s goods, services, or activities, where the broadcaster receives or reasonably anticipates the receipt of consideration from such individual or entity (other than a nonprofit organization).”³

5. In the instant matter, WPRR, Inc., the licensee of an NCE FM station, entered into a Programming Agreement (Agreement) with a for-profit company (Programmer) to provide programming for the station.⁴ The Agreement stipulated that “as consideration for the Licensee’s agreement to broadcast the Programming on the station pursuant to the terms of this Agreement, Programmer shall deliver the Programming to the station solely at Programmer’s expense and shall be responsible for the cost of producing or acquiring the Programming.”⁵ The Agreement also stated that “[i]n order to subsidize a portion of the costs of providing the Programming to licensee, Programmer shall be allowed to retain all revenues, if any, derived from the Programming, including listener contributions and underwriting support.”⁶ In addition, Licensee and Programmer further agreed that in order to subsidize the costs of keeping the station on the air during the term (of the Agreement), Programmer would

¹ 47 CFR § 73.503(d).

² *In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, BC Docket No. 21136, Memorandum Opinion and Order, FCC 82-327, 90 F.C.C. 2d 895, 911 (1982) (“*Educational Broadcast Stations*”).

³ *Educational Broadcast Stations*, 90 F.C.C. 2d at 911.

⁴ See Application File No. 0000244409 (as originally filed on May 6, 2024), Programming Agreement (Agreement).

⁵ *Id.*

⁶ *Id.*

reimburse Licensee a portion of Licensee's direct operating expenses for the station.⁷

6. The Agreement, by its terms, provided for the broadcast of material soliciting listener contributions and other revenue for the benefit of a for-profit entity in exchange for the receipt of consideration by the Licensee, in violation of the Consideration Received Rule.⁸ Specifically, under the Agreement the Licensee received, or reasonably anticipated receiving, something of value, i.e., programming material and programming goods and services, from Programmer, a for-profit organization, at no cost to the Licensee, thus, freeing station funds for programming purposes. The Programmer was compensated by retaining all revenues derived from the programming, including listener contributions and underwriting support, thereby, essentially requiring the station to air promotional material on behalf of a for-profit entity in exchange for consideration to the Licensee. In addition to the programming material and related goods and services, the Licensee also received pecuniary consideration from the Programmer in the form of reimbursement of the Licensee's direct operating expenses for WPRR-FM.

7. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Application. On September 24, 2024, the Parties filed an amendment to the Application confirming that they terminated the Agreement.⁹

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

IV. TERMS OF AGREEMENT

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

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

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

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

13. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee concerning the matters that were the subject of the Investigation, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that 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.

⁷ *Id.*; see also Agreement, Schedule 4, Expenses.

⁸ 47 CFR § 73.503(d).

⁹ Application File No. 0000244409, Attachs., Purpose of Amendment, Termination Agreement.

14. **Admission of Liability.** Licensee stipulates that its actions described in Paragraphs 5 through 6 violated the Commission's Consideration Received Rule, 47 CFR § 73.503(d).

15. **Compliance Officer.** Within 30 calendar days after the Effective Date, Licensee shall designate an officer or director to serve as the Compliance Officer who will 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..

16. **Compliance Plan.** For purposes of settling the matters set forth herein, Licensee agrees that it 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 section 73.503 of the Commission's Rules.¹⁰ The Compliance Plan shall apply to radio station WPRR-FM, Clyde Township, Michigan. The Compliance Plan shall contain, at a minimum, the following elements:

- a. **Consultation with Counsel.** Licensee shall consult with outside FCC regulatory counsel regarding Licensee's overall compliance with section 73.503 of the Rules. Such consultations shall occur on an annual basis, if not more frequently.
- b. **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, Licensee will issue a Compliance Manual that is distributed to employees and others who perform duties for Licensee that trigger or may trigger compliance-related responsibilities. 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 include: (1) an overview of the Commission's rules and policies regarding the noncommercial educational broadcasting service, including the Consideration Received Rule, as set forth in section 73.503 of the Rules and the Commission's orders interpreting the rule; (2) a description of the regulatory requirements and limitations applicable to noncommercial educational radio broadcast stations regarding promotional announcements, underwriting/donor acknowledgements, sponsorship identification, program-related materials, third-party fundraising, and restrictions on the receipt of consideration from program producers/suppliers; and (3) a description and explanation of the term "consideration" as it is applied to noncommercial educational broadcast stations in section 73.503(d) of the Rules and the Commission's orders interpreting the rule. Licensee shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.
- c. **Compliance Training Program.** Licensee shall administer a Compliance Training Program for employees and others who perform duties for Licensee related to the acceptance of programming materials and goods and/or services, listener contributions, underwriting, and other matters to which section 73.503 of the Rules applies. 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.
- d. **Compliance Reports.** Licensee shall submit a Compliance Report to the Commission ninety (90) calendar days after the Effective Date and annually thereafter on the anniversary of the Effective Date for a period of three (3) years. Each Compliance

¹⁰ The Compliance Plan is subject to a possible extension of up to an additional two (2) years if there are violations of Commission Rule 73.503(d) during the term of the Compliance Plan.

Report will include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, attesting to personal knowledge that: (1) Licensee has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 73.503 of the Rules, together with an accompanying statement explaining the basis for the certification; (2) Licensee has been utilizing those procedures since the previous Compliance Report was submitted; and (3) Licensee is not aware of any instances of non-compliance with the Consent Decree or those specified sections of the Rules. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Christopher Clark, Audio Division, FCC Media Bureau, at Christopher.Clark@fcc.gov.

17. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application after the Effective Date, provided that there are no issues other than the Violations that would preclude grant of the Application.

18. **Waivers.** Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹¹ relating to the Consent Decree or Adopting Order.

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

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

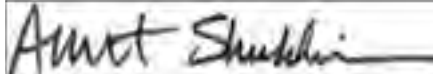
21. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Licensee does not expressly consent), such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

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

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

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.
24. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of all Parties.
25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
26. **Authorized Representative.** Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.
27. **Counterparts.** This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: 
Albert Shuldiner, Chief, Audio Division

Date: October 11, 2024

WPRR, Inc.

By: _____
Robert Goodrich, President

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

WPRR, Inc.

By: Robert Goodrich
Robert Goodrich, President

Date: 10/1/2024

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

In the Matter of)
)
Implementation of Sections 716 and 717 of the) CG Docket No. 10-213
Communications Act of 1934, as Enacted by the)
Twenty-First Century Communications and Video)
Accessibility Act of 2010)

**BIENNIAL REPORT TO CONGRESS
AS REQUIRED BY THE
TWENTY-FIRST CENTURY COMMUNICATIONS
AND VIDEO ACCESSIBILITY ACT OF 2010**

Adopted: October 8, 2024

Released: October 8, 2024

By the Chief, Consumer and Governmental Affairs Bureau:

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I. INTRODUCTION AND SCOPE OF REPORT

1. We submit this Biennial Report (Report) to the Committee on Commerce, Science, and Transportation of the U.S. Senate and the Committee on Energy and Commerce of the U.S. House of Representatives, in accordance with the Twenty-First Century Communications and Video Accessibility

Act of 2010 (CVAA).¹ The Report assesses industry compliance over the past two years with sections 255, 716, and 718 of the Communications Act of 1934, as amended (the Act). These sections require telecommunications and advanced communications services and equipment, and Internet browsers built into mobile phones (collectively, covered products and services) to be accessible to and usable by individuals with disabilities.² The Report also addresses accessibility barriers to new communications technologies,³ and the effect of the accessibility-related recordkeeping and enforcement requirements under section 717 on the development and deployment of such technologies.⁴ Finally, the Report provides information about the number and nature of, and actions taken to resolve, complaints alleging violations of sections 255, 716, and 718 for the period of January 1, 2022, through December 31, 2023, including the length of time that the Federal Communications Commission (FCC or Commission) took to resolve such complaints, and the number, status, nature, and outcome of any actions for mandamus filed, and of any appeals filed, pertaining to such complaints.⁵

2. To prepare this Report's findings, the Commission's Consumer and Governmental Affairs Bureau (CGB or Bureau) released two public notices. On March 7, 2024, the Bureau issued a the *2024 CVAA Assessment Public Notice* inviting comment on the level of accessibility and usability of covered products and services, as well as the existence of accessibility barriers to new communications technologies since the release of the *2022 CVAA Biennial Report*.⁶ The Bureau also sought comment on

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA); *see also* 47 U.S.C. § 618(b).

² 47 U.S.C. § 618(b)(1)(A); *see also* 47 U.S.C. §§ 255, 617, 619; 47 CFR pts. 6, 7, 14.

³ 47 U.S.C. § 618(b)(1)(B). For purposes of this Report, "new communications technologies" may be either within or outside the scope of telecommunications, advanced communication services, or Internet browser technologies covered under sections 255, 716, and 718 of the Act. *See, e.g., 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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 31 FCC Rcd 11065, 11084, para. 44 & n.165 (CGB 2016) (*2016 CVAA Biennial Report*). As technology evolves, Congress may wish to consider whether updates to the CVAA are needed to keep pace with these new methods of communication.

⁴ 47 U.S.C. § 618(b)(1)(G). Section 717(a) requires covered entities to keep records of their efforts to implement sections 255, 716, and 718, including information about their efforts to consult with people with disabilities, descriptions of the accessibility features of their products and services, and information about the compatibility of these products and services with peripheral devices or specialized customer premises equipment commonly used by people with disabilities to achieve access. 47 U.S.C. § 618(a)(5)(A). Under the Commission's rules, covered entities must certify annually to the Commission that they have kept records in accordance with this requirement. *See* 47 U.S.C. § 618(a)(5)(B); 47 CFR § 14.31. The FCC reminds covered entities each year of these certification requirements. *See Accessibility Recordkeeping Compliance Certification and Contact Information Reporting Requirements*, Public Notice, DA 24-177 (CGB Feb. 26, 2024). Section 717(a) also contains procedures for complaints alleging violations of sections 255, 716, or 718. 47 U.S.C. § 618(a)(1)-(4); 47 CFR §§ 14.30-14.38. In response to an informal complaint, the manufacturer or service provider "must produce documents demonstrating its due diligence in exploring accessibility and achievability . . . throughout the design, development, testing, and deployment stages of a product or service." 47 CFR § 14.36(a).

⁵ 47 U.S.C. § 618(b)(1)(C)-(F).

⁶ *Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the 2024 Biennial Report Required by the Twenty-First Century Communications and Video Accessibility Act*, CG Docket No. 10-213, Public Notice, DA 24-206 (CGB Mar. 7, 2024) (*2024 CVAA Assessment Public Notice*); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 37 FCC Rcd 11360 (2022) (*2022 CVAA Biennial Report*).

any impact that the accessibility recordkeeping requirements and enforcement measures may have had on the development and deployment of new communications technologies.⁷ Comments were received from the Consumer Technology Association (CTA), CTIA, and the Accessibility Advocacy Organizations (AAO).⁸ On July 16, 2024, the Bureau released the *2024 CVAA Tentative Findings Public Notice*.⁹ AAO, CTIA, and the Wisconsin Department of Health Services, Office for the Promotion of Independent Living (Wisconsin OPIL) filed comments in response to this second notice.¹⁰

3. The Commission's Biennial Reports to Congress issued since enactment of the CVAA have marked the progress of access to advanced communications services and equipment, telecommunications services and equipment, and internet browsers built into mobile phones.¹¹ In this Biennial Report, we find that this progress has continued over the last two years. Companies launched new products with accessibility features built-in and introduced new accessibility interfaces. However, consumers identified products and services that were not accessible during this time period. In particular, commenters described concerns regarding access to emergency services for individuals who are deaf, deafblind, hard of hearing, or have speech disabilities, as well as current limitations surrounding the use of automatic speech recognition (ASR) technology by individuals with speech disabilities.

II. PROVISIONS OF THE CVAA COVERED BY THIS REPORT

4. The purpose of the CVAA is "to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."¹² To that

⁷ See *2024 CVAA Assessment Public Notice* at 5, para. 14.

⁸ Comments by AAO were filed on behalf of TDIforAccess, Inc., Communication Service for the Deaf, National Association of the Deaf, Hearing Loss Association of America, and the Registry of Interpreters for the Deaf, Inc.

⁹ *Consumer and Governmental Affairs Bureau Seeks Comment on Tentative Findings for the 2024 Twenty-First Century Communications and Video Accessibility Act Biennial Report*, CG Docket No. 10-213, Public Notice, DA 24-691 (CGB July 16, 2024) (*2024 CVAA Tentative Findings Public Notice*); see also 47 U.S.C. § 618(b)(2) (requiring the Commission to seek public comment on its tentative findings prior to submission of each biennial report to Congress).

¹⁰ For clarity, we cite to comments submitted in response to this second Public Notice as "Tentative Findings Comments." Additionally, USTelecom – The Broadband Association (USTelecom) submitted an *ex parte* letter during the comment period. See Letter from Kathleen Slattery Thompson, Vice President, Policy & Advocacy, USTelecom – The Broadband Association, to Marlene Dortch, Secretary, FCC, CG Docket No. 10-213 (filed Aug. 30, 2024) (USTelecom Letter).

¹¹ See, e.g., *2022 CVAA Biennial Report; 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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 35 FCC Rcd 11227 (2020) (*2020 CVAA Biennial Report*); *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 33 FCC Rcd 9828, (CGB 2018) (*2018 CVAA Biennial Report*); *2016 CVAA Biennial Report*, 31 FCC Rcd at 11084, para. 44 & n.165; *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 29 FCC Rcd 11909, 11911-12, para. 3 (CGB 2014) (*2014 CVAA Biennial Report*); *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 27 FCC Rcd 12204, 12220-22, paras. 43, 45 (CGB 2012) (*2012 CVAA Biennial Report*).

¹² Senate Report at 1; House Report at 19 (both noting that the communications marketplace had undergone a "fundamental transformation" since Congress adopted section 255 in 1996 and that, in the past, people with

(continued....)

end, the CVAA requires that the Commission report on industry compliance with the following accessibility-related provisions of the Act.¹³

5. *Section 255.* Section 255 requires providers of telecommunications services and manufacturers of telecommunications equipment or customer premises equipment (CPE) to ensure that their services and equipment are accessible to and usable by individuals with disabilities, if readily achievable.¹⁴ When these requirements are not readily achievable, covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily achievable.¹⁵ Pursuant to the Commission's rules, section 255's accessibility obligations extend as well to interconnected Voice over Internet Protocol (VoIP) service providers and equipment manufacturers.¹⁶

6. *Section 716.* Section 716 requires providers of advanced communications services (ACS) and manufacturers of equipment used for ACS to ensure that their services and equipment are accessible to and usable by individuals with disabilities, unless doing so is not achievable (defined as "with reasonable effort or expense").¹⁷ "Advanced communications services" include: (1) interconnected VoIP service; (2) non-interconnected VoIP service; (3) electronic messaging service; and (4) interoperable video conferencing service.¹⁸ In contrast to interconnected VoIP services, which enable people to make

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disabilities often did not share in the benefits of this rapid technological advancement).

¹³ See 47 U.S.C. § 618(b)(1). See also *infra* Sections III-VI. Comments addressed to compliance with accessibility provisions that fall outside these specific CVAA provisions are not addressed in this Report.

¹⁴ 47 U.S.C. § 255(b), (c); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6449, para. 77 (1999) (*Section 255 Order*). "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9). The Act defines telecommunications equipment as "equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)." 47 U.S.C. § 153(52). It defines "customer premises equipment" as "equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications." 47 U.S.C. § 153(16). Equipment covered under section 255 includes, but is not limited to, telecommunications equipment and CPE, such as wireline, cordless, and wireless telephones, fax machines, and answering machines. The *Section 255 Order* adopted rules requiring that phone features such as telephone calls, call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing be accessible. *Section 255 Order*, 16 FCC Rcd at 6449 para. 77; 47 CFR Part 6. In addition, the rules implementing section 255 cover voicemail and interactive voice response systems (phone systems that provide callers with menus of choices). 47 CFR Part 7.

¹⁵ 47 U.S.C. § 255(d).

¹⁶ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 22 FCC Rcd 11275 (2007).

¹⁷ 47 U.S.C. § 617(a)(1), (b)(1), (g); 47 CFR §§ 14.20(a)(1)-(2), 14.10(b).

¹⁸ 47 U.S.C. § 153(1); see also 47 CFR § 14.10(c). Section 716 does not apply to services or equipment, including interconnected VoIP services and equipment, that were subject to section 255 on October 7, 2010. 47 U.S.C. § 617(f). Those services and equipment remain subject to the requirements of section 255. *Id.* In 2022, Congress amended the statutory definition of "advanced communications services" to encompass incarcerated people's communications services (IPCS), i.e., audio and video communications services that are provided to people who are incarcerated. See 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). The Commission recently aligned the Part 14

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and receive calls to and from the public switched telephone network (PSTN), non-interconnected VoIP includes services that enable real-time voice communications either to or from the PSTN (but not both) or which neither begin nor end on the PSTN.¹⁹ Electronic messaging services include services such as e-mail, short message service (SMS) text messaging, and instant messaging, which enable real-time or near real-time text messages between individuals over communications networks.²⁰ Interoperable video conferencing services provide real-time video communications, including audio, to enable users to share information.²¹

7. The accessibility requirements for section 716 may be satisfied by: (1) building accessibility into the service or equipment²² or (2) using third-party applications, peripheral devices, software, hardware, or CPE that is available to consumers at nominal cost and that individuals with disabilities can access.²³ When ensuring accessibility through either of those options is not achievable, covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, unless that is not achievable.²⁴

8. *Section 718.* Section 718 requires mobile phone service providers and manufacturers to make Internet browsers built into mobile phones accessible to and usable by people who are blind or have a visual impairment, unless doing so is not achievable.²⁵ This requirement may be satisfied with or without the use of third-party applications, peripheral devices, software, hardware, or CPE that is available to consumers at nominal cost and that individuals with disabilities can access.²⁶

III. COMPLIANCE WITH SECTIONS 255, 716, AND 718

A. Accessibility

9. Based on the comments filed in response to the *2024 CVAA Assessment Public Notice* and the *2024 CVAA Tentative Findings Public Notice*, a review of the complaints filed, and as described further herein, we affirm our tentative findings with respect to compliance with obligations contained in sections 255, 716, and 718. During the two years since the Commission's last Biennial Report, we find that accessibility of telecommunications and advanced communications services and equipment continues to improve;²⁷ however, some accessibility gaps remain.²⁸ The Commission remains committed to

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definition of “advanced communications services” with the amended statutory definition, although this rule change is not yet effective. *See Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for 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, at 253-54, para. 483 (July 22, 2024).

¹⁹ See 47 U.S.C. § 153(25), 153(36); 47 CFR § 9.3.

²⁰ 47 U.S.C. § 153(19).

²¹ 47 U.S.C. § 153(27).

²² 47 U.S.C. § 617(a)(2)(A), (b)(2)(A).

²³ 47 U.S.C. § 617(a)(2)(B), (b)(2)(B).

²⁴ 47 U.S.C. § 617(c).

²⁵ 47 U.S.C. § 619(a); 47 CFR § 14.61(a).

²⁶ 47 U.S.C. § 619(b); 47 CFR § 14.61(b).

²⁷ CTA states, for instance, that “[m]odern consumer technologies, which include devices, services and applications (apps), help tear down accessibility barriers for people with disabilities by providing opportunities to access the most sophisticated technologies.” CTA Comments at 2. *See also* CTIA Tentative Findings Comments at 2-3.

ensuring that relevant technologies are accessible to and useable by people with disabilities, and that people with disabilities are “able to fully utilize communications services and equipment and better access video programming.”²⁹

10. The comments show that, in the last two years, a wide variety of new and enhanced features have been made available that make more devices and features accessible to a wider community of people with disabilities.³⁰ CTIA describes “an ever-expanding suite of customizable accessibility features and apps that support a wide range of accessibility needs” for smartphone users.³¹ For example, with AssistiveTouch on iOS, those with vision or mobility disabilities can use a joystick or other accessory to interact with the phone, and Android users can use Switch Access to interact with the device using a separate screen, camera, microphone, or the back of the device, instead of using the smartphone’s built-in touchscreen.³²

11. For people with hearing disabilities, technology continues to evolve, enhancing the accessibility of modern communications. For instance, CTIA comments that Live Captions on iOS provides system-level, automatic captioning of speech during phone calls, video calls, and other speech detected on a smartphone.³³ CTA also highlights that over-the-counter hearing aids, often incorporating Bluetooth connectivity, and other regulatory changes have lowered barriers and stigma to using hearing devices, and a new, non-proprietary Bluetooth standard, Bluetooth Hearing Access Profile, developed specifically for use with hearing aids “holds significant potential for the future.”³⁴

12. Beyond the smartphone, CTIA reports that feature phones today “offer a wide range of accessibility features to support people who benefit from more streamlined functionality or prefer on-phone tactile inputs.”³⁵ For example, CTIA explains, feature phones may offer bigger buttons and displays, as well as hearing aid compatibility, and streamlined access to key settings and features.³⁶ Similarly, new features like Assistive Access on iOS or Samsung’s Easy Mode allow smartphone users

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²⁸ AAO explains that, “[s]ince Congress enacted the CVAA, accessibility requirements for people with disabilities have not kept pace with changing technologies. As a result, these individuals do not have full access to many communication and video tools that are essential today. . . . The COVID-19 pandemic exacerbated these accessibility gaps for individuals with disabilities, as online platforms and services became increasingly essential.” AAO Comments at 1-2. *See also* AAO Tentative Findings Comments at 2 (“The Accessibility Advocacy Organizations agree that some accessibility gaps remain.”).

²⁹ *See* S. Rep. No. 111-386, 111th Cong., at 1 (2010) (the Senate Committee on Commerce, Science, and Transportation Report on the CVAA).

³⁰ *See* CTIA Tentative Findings Comments at 2.

³¹ CTIA Comments at 11.

³² *See* CTIA Comments at 11.

³³ *See* CTIA Comments at 13. *See also* 2022 CVAA Biennial Report, 37 FCC Rcd at 11366, para. 13 (discussing Android’s Live Caption feature, which similarly adds automatic captions to phone calls, video calls, and other speech detected on a smartphone).

³⁴ CTA Comments at 4-5.

³⁵ CTIA Comments at 17. “Feature phones are used with wireless services and include (1) phones used primarily or exclusively for voice communications and (2) phones used for voice communications and text messaging, with little or no computing capabilities.” *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 35 FCC Rcd 11227, 11234 para. 16 (2020) (2020 CVAA Biennial Report). *See also* 2022 CVAA Biennial Report, 37 FCC Rcd at 11365-66 n.41.

³⁶ *See* CTIA Comments at 17.

with cognitive disabilities to streamline and simplify their phone experience.³⁷

13. AAO raises concerns about access to emergency services for individuals who are deaf, deafblind, hard of hearing, or have speech disabilities.³⁸ Specifically, AAO notes that traditional text telephones (TTYs) do not work reliably with Internet Protocol (IP)-based telephony, potentially hindering access to 911 during critical situations.³⁹ It proposes that the Commission should ensure that legacy TTY users are “educated about and have access to alternative communications solutions,”⁴⁰ and should “plan proactively . . . to replace TTYs on wireline networks with RTT – as well as to explore other IP- and digital-based solutions for these users.”⁴¹ USTelecom, however, asserts that “TTY works reliably over Internet Protocol-based (VoIP) systems.”⁴² While acknowledging “limitations inherent in TTY,” USTelecom further emphasizes that TTY is compatible with both IP-based and traditional legacy networks, whereas Real-Time Text (RTT) technology requires that the entire call path flow through IP infrastructure, which may not be possible for many consumers “even if providers have fully upgraded their networks.”⁴³

14. Relatedly, the consumer advocates contend that “more wireless handsets should be equipped with GPS technology and native dialing interfaces for emergency calling” by individuals with disabilities.⁴⁴ By automatically transmitting a 911 caller’s location to emergency responders, AAO states that native dialing not only enables access to emergency services for callers who may be unable to verbally communicate their location but “can also save precious time in an emergency instead of having to open a VRS app and dial 911 from there.”⁴⁵

15. Consumer advocates also highlight the importance of “one number solutions,” particularly for individuals who are deaf, deafblind, hard of hearing, or have speech disabilities.⁴⁶ Many of those individuals, advocates explain, use multiple phone numbers, i.e., one number issued to a TRS user for TRS phone calls and another number for text messages. However, using multiple phone numbers often complicates daily tasks like confirming appointments or deliveries, or filling out forms. Thus, the consumer advocates argue, a one number solution is necessary to achieve communications equity. AAO alleges that multiple solutions are being developed using smartphones and specialized apps to provide one number functionality, and urges the Commission to support the development and implementation of these

³⁷ See CTIA Comments at 17-18.

³⁸ See AAO Comments at 3-5; AAO Tentative Findings Comments at 2-5.

³⁹ The Wisconsin OPIL agrees with AAO regarding TTY’s reliability over IP-based networks. See Wisconsin OPIL Tentative Findings Comments at 1.

⁴⁰ AAO Comments at 3-4.

⁴¹ AAO Comments at 4. The Commission has not set a sunset date for RTT-TTY backward compatibility purposes, and whether to mandate RTT on wireline networks. See *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16-145 and GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568 (2016). See also Wisconsin OPIL Tentative Findings Comments at 1.

⁴² USTelecom Letter at 1.

⁴³ USTelecom Letter at 2.

⁴⁴ AAO Comments at 5.

⁴⁵ AAO Comments at 5.

⁴⁶ See AAO Comments at 6.

one number solutions.⁴⁷

B. Usability

16. Sections 255, 716 and 718 also require that covered services and equipment are “usable” by people with disabilities.⁴⁸ A product or service is “usable” if companies provide people with disabilities with information on how to use services, such as documentation for the product or service, including instructions, product or service information (including accessible feature information), customer support, and technical support.⁴⁹ We find that, while usability continues to improve for some covered services and equipment, there is still room for improvement. Consumer advocates in particular argue that “[m]ore efforts should be taken to improve usability through captioned instructional videos, accessible online manuals, and customer service / accessibility help desks, including plain and simple language and iconography that will make these instructions easier for people with cognitive disabilities.”⁵⁰

17. CTIA asserts that wireless carriers and equipment manufacturers “have taken steps to promote the accessibility of information and documentation, including in user guides, bills, installation guides, and product support communications, as well as through training for customer service representatives and technical support personnel.”⁵¹ For example, CTIA explains, multiple wireless carriers offer support materials in braille or large print format, and one carrier provides customer service using video conferencing with American Sign Language support.⁵² Another carrier is developing a setup tool designed to address common issues for people with disabilities; by presenting instructions and information audibly, with braille, and online via a QR code, users with disabilities may find it easier to activate their devices without assistance.⁵³ CTIA also notes that Apple’s SignTime video service provides users access to a sign language interpreter when contacting Apple’s support representatives, and other equipment manufacturers provide text and video guides explaining how to set up smartphones.⁵⁴

18. Regarding web browsers built into mobile phones, CTIA notes continued accessibility improvements. Contributors from Apple, Mozilla, Igalia, Bocoup, Adobe, Hilton, Microsoft, Google, and individual web developers are collaborating on an interoperable accessibility testing project, Interop, in

⁴⁷ See AAO Comments at 6.

⁴⁸ 47 U.S.C. §§ 255, 617, 619.

⁴⁹ See 47 CFR §§ 6.3(l), 7.3(l), 14.21(c); see also 47 CFR §§ 6.11, 7.11, 14.20(d), 14.60(b)(4).

⁵⁰ AAO Comments at 7. The Wisconsin OPIL similarly notes that “usability remain[s] inconsistent.” Wisconsin OPIL Tentative Findings Comments at 1. See also AAO Tentative Findings Comments at 5.

⁵¹ CTIA Comments at 27. See CTIA Tentative Findings Comments at 3.

⁵² See CTIA Comments at 27 (citing AT&T, *Support options for people with disabilities*, <https://www.att.com/support/article/wireless/KM1207497/> (last visited June 5, 2024); Verizon, *Visual Assistance*, <https://www.verizon.com/about/accessibility/vision> (last visited June 5, 2024); T-Mobile, *Accessible Wireless*, <https://www.tmobileaccess.com/wireless> (last visited June 5, 2024)). CTIA also reiterates that people with disabilities may learn about their wireless options from the Global Accessibility Reporting Initiative (GARI) database that CTIA maintains on its website – AccessWireless.org. See CTIA Comments at 22-23. However, as the Bureau noted in the 2022 CVAA Biennial Report, consumer advocates have noted shortcomings with the GARI database. See 2022 CVAA Biennial Report, 37 FCC Rcd at 11368, para. 19 (“ACB contends . . . that the GARI tool does not identify which phones provide ACS in an accessible manner, and that some information is not updated comprehensively, like the list of smartwatches. ACB also states that some companies may not be reachable because they have not registered their contact information in the FCC’s Recordkeeping Compliance Certification and Contact Information Registry (RCCCI).”).

⁵³ See CTIA Comments at 14.

⁵⁴ See CTIA Comments at 27-28 (citing Apple, *How to contact Apple in American Sign Language (ASL) using SignTime*, <https://support.apple.com/en-us/101572> (last visited June 5, 2024)).

all major browsers.⁵⁵ In 2023, Interop collaborators wrote over 1,300 new accessibility tests, and in 2024, the project aims to fix every issue uncovered by those tests in web browsers.⁵⁶

C. Inclusion of People with Disabilities in Product and Service Design and Development

19. We find that covered entities have continued to include people with disabilities in product and service design and development, although there remains room for improvement. CTA and CTIA explain that industry has engaged consumers in product development and testing,⁵⁷ advisory groups,⁵⁸ conferences,⁵⁹ and product demonstrations.⁶⁰ However, AAO contends that including people with disabilities in product and service design and development processes “to an even greater extent is necessary and would further advance the delivery of equitable communications,”⁶¹ and the Wisconsin OPIL likewise “strongly recommends . . . urg[ing] manufacturers and service providers to invest heavily in more inclusive design and user testing processes that involve people with disabilities at every stage of product development.”⁶²

IV. ACCESSIBILITY BARRIERS TO NEW COMMUNICATIONS TECHNOLOGIES

20. We find that accessibility barriers persist with respect to new communications technologies, although the Commission and other groups are actively working towards addressing those barriers. We discuss the extent of accessibility barriers to several of these technologies in turn.

⁵⁵ See CTIA Comments at 28 (citing James Craig, *Accessibility Testing for WPT Interop 2024*, <https://github.com/web-platform-tests/interop-accessibility> (last visited June 5, 2024)).

⁵⁶ See Jen Simmons, *The web just gets better with Interop 2024*, <https://webkit.org/blog/14955/the-web-just-gets-better-with-interop/> (Feb. 1, 2024) (“By including these new Accessibility tests in Interop 2024, the hope is to fix every issue in all browsers. We want it to be easier for developers to create accessible sites and make the web better for everyone, including people with disabilities.”).

⁵⁷ See CTIA Comments at 25-26 (stating that “the wireless industry continues to collaborate with people with disabilities in furtherance of accessibility best practices and accessibility by design principles” and that “[m]anufacturers likewise remain committed to accessibility by design”).

⁵⁸ CTIA, CTA, and their members participate in the FCC’s Disability Advisory Committee (DAC) and Consumer Advisory Committee (CAC). See CTA Comments at 4; CTIA Comments at 23. CTIA states that its members maintain direct contact with the accessibility community through their design and development activities. CTIA Comments at 23-24. CTIA also notes that it and its members participated in the Hearing Aid Compatibility Task Force (HAC Task Force), which issued recommendations for achieving 100% hearing aid compatibility for wireless handsets in 2022. See CTIA Comments at 29 (citing Hearing Aid Compatibility Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022), <https://www.fcc.gov/ecfs/document/1216940802129/1>).

⁵⁹ See CTA Comments at 6 (explaining that CTA’s affiliated foundation sponsors a group of “Accessibility Leaders” to attend its annual CES trade show and “provide valuable feedback not only to CES participants focused on assistive technology, but on technology shown throughout the show floor”); CTIA Comments at 23 (describing CTIA’s Accessibility Outreach Initiative Forum, which facilitates discussion among industry representatives, policymakers, and members of the accessibility community); CTIA Tentative Findings Comments at 4 (echoing CTIA’s previous comments regarding engagement with the accessibility community).

⁶⁰ See CTA Comments at 6-7 (discussing how the CES trade show provides an opportunity for highlighting innovations in accessible technologies); CTIA Comments at 23 (noting that CTIA’s Accessibility Outreach Initiative Forum includes a showcase of accessible innovations).

⁶¹ AAO Tentative Findings Comments at 6.

⁶² Wisconsin OPIL Tentative Findings Comments at 1.

21. Interoperable video conferencing services (IVCS) have become a vital form of communications, particularly since the beginning of the COVID-19 pandemic.⁶³ The Commission thus affirmed in the *2023 IVCS Order* that IVCS are advanced communications services and, as of September 3, 2024, are covered by the FCC's Part 14 rules.⁶⁴ Although the accessibility of those services is the subject of an ongoing rulemaking proceeding,⁶⁵ parties responding to the *2024 CVAA Assessment Public Notice* also discuss the accessibility of IVCS in their comments. CTIA, for instance, states that multiple services and platforms have introduced additional accessibility features, like live captioning, translation, and transcription capabilities, and settings improving the visibility of sign language users in a video conference call.⁶⁶

22. Still, consumer advocates depict an inconsistent landscape of accessibility functionality, presenting "major obstacles to full access to video conferencing platforms" over the past two years.⁶⁷ The advocates report that the quality of captioning varies among services relying on ASR technology; such captioning may be incomplete or delayed and may suffer from readability issues.⁶⁸ Moreover, the advocates say, some IVCS platforms lack "essential accessibility features"—for example, pinning or spotlighting capabilities, customizable screen layouts, automated captions and transcripts, visual descriptive services and intuitive interfaces for low-vision or blind users, accessible voice controls, and easy-to-use interfaces for users with cognitive disabilities.⁶⁹ On September 26, 2024, the Commission established IVCS-specific performance objectives specifically addressing some of these concerns and sought comment on establishing further objectives addressing others.⁷⁰

⁶³ See *2022 CVAA Biennial Report*, 37 FCC Rcd at 11369, para. 21 ("The COVID-19 pandemic has highlighted the importance of accessible video conferencing services for people with disabilities."); *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*, CG Docket No. 23-161, Report and Order, Notice of Proposed Rulemaking, and Order, 38 FCC Rcd 6300, 6303, para. 6 (2023) (*2023 IVCS Order* or *Notice*, as appropriate) ("Since the March 2020 outbreak of the COVID-19 pandemic in the United States, video conferencing has grown from a niche product to a central pillar of our communications infrastructure.").

⁶⁴ See *2023 IVCS Order*, 38 FCC Rcd at 6317-18, para. 41 (requiring compliance with Part 14 one year from the effective date of the *IVCS Order*). See also *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).

⁶⁵ See generally *2023 IVCS Notice*.

⁶⁶ See CTIA Comments at 20-21 (citing Deb Landau, *Amazon's 8 most helpful accessibility features, including Reading Ruler and Dialogue Boost on Prime Video*, <https://www.aboutamazon.com/news/devices/amazon-accessibility-features> (last visited June 5, 2024); Qualcomm, *Building Togetherness: Enabling Connections with AI Language Translation* (Sep. 20, 2023), <https://www.qualcomm.com/snapdragon/news/building-togetherness--enabling-connections-with-ai-language-tra>; Amit Barave, *Breaking Down Barriers: Improving Accessibility for Virtual Meetings* (May 16, 2023), <https://blog.webex.com/customer-stories/improving-accessibility-for-virtual-meetings/>; Chris Sano, *Introducing Sign Language View for Teams Meetings* (Nov. 17, 2022), <https://techcommunity.microsoft.com/t5/microsoft-teams-blog/introducing-sign-language-view-for-teams-meetings/ba-p/3671257>; Apple, *How to contact Apple in American Sign Language (ASL) using SignTime*, <https://support.apple.com/en-us/101572> (last visited June 5, 2024)).

⁶⁷ See AAO Comments at 5.

⁶⁸ See AAO Comments at 5.

⁶⁹ See AAO Comments at 5-6.

⁷⁰ See *Access to Video Conferencing Services et al.*, CG Docket No. 23-161 et al., Second Report and Order and Further Notice of Proposed Rulemaking, FCC 24-95 (rel. Sept. 27, 2024).

23. There may also be accessibility barriers with respect to ASR technology more generally. Intuitively, voice-activated user interfaces may improve devices' accessibility, but consumer advocates note that developers often train the ASR for those interfaces with a dataset that does not include audio from many users with speech disabilities.⁷¹ CTA, on the other hand, emphasizes that artificial intelligence-powered ASR technology "is creating new methods of input, interactions, and communications for individuals with standard, atypical, and dysarthric speech."⁷² These differing perspectives reflect that artificial intelligence-based technologies "can increase accessibility, but . . . can also create barriers for people with disabilities."⁷³

V. COMPLAINTS RECEIVED PURSUANT TO SECTION 717

24. Under Section 717, a person may file a formal or informal complaint alleging a violation of section 255, 716, or 718.⁷⁴ Before a consumer may file an informal complaint, the consumer must first submit a request for dispute assistance (RDA) to the Commission's Disability Rights Office (DRO) for help in resolving the accessibility problem between the consumer and the covered entity.⁷⁵ If the consumer and the covered entity do not reach a settlement within 30 days after an RDA is filed, the parties may agree to extend the time for resolution in 30-day increments, or the consumer may then, pursuant to Section 717, file an informal complaint with the Enforcement Bureau.⁷⁶

25. The Commission must forward the informal complaint to the named service provider or equipment manufacturer.⁷⁷ The service provider or manufacturer then must serve an answer responsive to

⁷¹ See AAO Comments at 9; AAO Tentative Findings Comments at 6-7; Wisconsin OPIL Tentative Findings Comments at 1 (noting the importance of training ASR with a "diverse dataset that include[s] audio from users with various speech capabilities" and for mitigating delays in ASR-based captioning).

⁷² See CTA Comments at 9. CTA cites Voiceitt as having developed a patented ASR technology that is targeted "for people with speech disabilities, aging voices, and accents." CTA Comments at 9 n.22 (citing Voiceitt, <https://www.voiceitt.com/> (last visited June 5, 2024)).

⁷³ U.S. Access Board, *U.S. Access Board Holds Signing of Artificial Intelligence Memorandum of Understanding with Disability and Technology Partners*, <https://www.access-board.gov/news/2024/05/15/u-s-access-board-holds-signing-of-artificial-intelligence-memorandum-of-understanding-with-disability-and-technology-partners/> (May 15, 2024) (U.S. Access Board MOU Press Release). See also Exec. Order No. 14110, 88 Fed. Reg. 75191, 75191, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023) ("[I]rresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security. Harnessing AI for good and realizing its myriad benefits requires mitigating its substantial risks.").

⁷⁴ 47 USC § 618(a)(3)(A) ("Any person alleging a violation of section 255, 617, or 619 of this title by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission."); see also 47 USC § 618(a)(3)(B) (requiring the Commission to investigate informal complaints and determine if a violation occurred).

⁷⁵ See 47 CFR §§ 14.32 (consumer dispute assistance), 14.34-14.37 (informal complaints), 14.38-14.52 (formal complaints); see also *New Procedures for Telecommunications and Advanced Communications Accessibility Complaints*, Public Notice, 28 FCC Rcd 15712 (CGB 2013). A consumer also may file a formal complaint with the Enforcement Bureau without first submitting an RDA or an informal complaint. 47 CFR §§ 14.38-14.52.

⁷⁶ 47 CFR § 14.32(e); see also *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; and In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14658, para. 237 (2011).

⁷⁷ 47 CFR § 14.35(a).

the complaint and any Commission inquiries and serve the complainant and the Commission with a non-confidential summary of that answer within 20 days of service of the complaint.⁷⁸ Within 180 days after receipt of the complaint, the Commission must conclude an investigation into the merits of the complaint and issue an order determining whether a violation has occurred.⁷⁹ It may, in such order, or in a subsequent order, direct the service provider to bring the service or, in the case of a manufacturer, the next generation of the equipment, into compliance with the requirements of section 255, 716, or 718 within a reasonable period of time and take other authorized and appropriate enforcement action.⁸⁰

A. Number and Nature of Complaints Received

26. From January 1, 2022, to December 31, 2023, consumers filed 44 RDAs alleging violations of section 255, 716, or 718.⁸¹ During this two-year period, DRO resolved 43 RDAs through facilitated dialogue and negotiation. One consumer exercised their right to file an informal complaint because the RDA was not resolved.

B. Discussion of RDAs

27. In their RDAs, some consumers stated that their devices and services were inaccessible. Other consumers claimed accessibility barriers to reaching customer service or that customer service was unable to help them locate accessible devices or to fix accessibility problems. These RDAs were brought by people with a wide range of disabilities. Some RDAs helped individuals with specific accessibility problems. Others required significant effort to resolve the dispute. These RDAs required companies to update communication software used by a variety of health care organizations, create new accessibility features, create new device interfaces, alter equipment, find and test new equipment to ensure compatibility with networks, and create disability-related training.

28. While most RDAs sought assistance regarding accessible mobile phones, each RDA involved a unique individual. For instance, some people who were blind had difficulties accessing their cellular home phone base station—a device that connects a home phone to the cellular network. Others had accessibility issues with smartwatches. Some people with various disabilities, such as autism, hand dexterity disabilities, and visual disabilities, sought communication devices with physical keyboards or tactile buttons. Some people who are deafblind stated that their braille displays continued to disconnect from their mobile phones and they could not independently reconnect them.

29. Some RDAs focused on services and specific features offered by carriers. Some people who are deaf or hard of hearing stated that they did not have access to visual voicemail. Others said their updated devices were missing a specific accessibility feature such as voice dialing, operator assistance, or talking caller ID. Some people sought assistance regarding accessible billing. Further, other people who are blind or visually impaired requested free access to directory assistance (411).

⁷⁸ 47 CFR § 14.36(b)-(c). The complainant may then file a reply. 47 CFR § 14.36(d).

⁷⁹ 47 U.S.C. § 618(a)(3)(B), (a)(4); *see also* 47 CFR § 14.37(a).

⁸⁰ 47 U.S.C. § 618(a)(3)(B)(i); *see also* 47 CFR § 14.37(b). Any manufacturer or service provider that is the subject of such order has a reasonable opportunity to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action. 47 U.S.C. § 618(a)(4); *see also* 47 CFR § 14.37(c).

⁸¹ We note that, while consumers filed an additional 723 requests for dispute assistance during this period, DRO determined that these requests were not eligible for the RDA process because they did not allege violations of section 255, 716, or 718 of the Act. These requests are therefore not counted or discussed in this Report. DRO treats such complaints as informal complaints for further DRO processing (if they are related to accessibility) or refers them to the FCC's Consumer Inquiries and Complaints Division for processing (if they are unrelated to accessibility). For requests alleging violations of statutes outside of the Commission's jurisdiction, DRO refers these complaints to the relevant federal agencies (such as the Department of Justice for complaints alleging violations of the Americans with Disabilities Act).

30. Some RDA filers had challenges with customer service. A significant portion of filers could not accessibly authenticate themselves to carriers because the SMS authentication code could not be accessibly retrieved during a phone call or because of a long latency period in retrieving the number. Others, who are deaf or hard of hearing, were not able to start service or change their plan because they were calling via telecommunications relay service which was rejected by the involved customer service. Innovative ways to return devices without physically visiting the store premises helped support the needs of an individual with a mental health disability. Some people who are blind stated that they were not able to independently activate their phones because the SIM card numbers were not provided in an accessible format, or the SIM card accessibility features could not be independently activated. Some persons with physical disabilities were not able to insert their SIM cards.

31. Some RDAs were unrelated to mobile phone carriers. For example, some people with disabilities encountered barriers in accessing communication and other aspects of video games and social media platforms. Other people who are blind were unable to access healthcare patient portal communication features because they were not accessible via screen readers. An inaccessible CAPTCHA barred access to advanced settings for email accounts for another person with a disability.

C. Actions Taken to Resolve RDAs

32. Through collaboration between the DRO, consumers, and service providers, nearly all RDAs were successfully resolved. Manufacturers and service providers implemented various accessibility improvements in response to consumer concerns. These improvements addressed a range of needs, including enhanced features for users with visual impairments, the development of specialized communication tools for users with specific disabilities, increased customer service accessibility for individuals with various needs, and accessibility updates to websites and mobile applications.

D. Actions Taken to Resolve Informal Complaints

33. One RDA did not reach a resolution. In that RDA, a consumer who is blind alleged that his mobile phone provider, Assurance Wireless, failed to provide accessible and usable wireless service, including an accessible device, reliable service activation and provisioning, and customer service trained to address accessibility issues. After the consumer was unable to reach a resolution with the company on these allegations, the consumer filed an informal complaint with the Commission's Enforcement Bureau (EB).

E. Time Used to Resolve RDAs and the Informal Complaints

34. Of the RDAs that were filed during the reporting period, twelve (27%) were completed within thirty days, nine (20%) were completed between thirty-one and sixty days, eleven (25%) were completed within sixty-one and ninety days, seven (16%) were completed within ninety-one and one hundred and eighty days, and four (9%) were completed after one hundred and eighty days. One informal complaint was filed. In that instance, the order was issued within the one hundred and eighty-day statutory time-period.⁸²

F. Actions for Mandamus and Appeals Filed

35. There were no actions for mandamus or appeals filed with respect to complaints during the period covered by this Report.

⁸² 47 USC § 618(a)(3)(B). *See Assurance Wireless, USA L.P. and T-Mobile USA, Inc.; Informal Complaint Regarding Access to Telecommunications and Advanced Communications Services*, File No. EB-TCD-24-00036031, Modified Order, DA 24-633 (EB July 8, 2024).

VI. EFFECT OF SECTION 717'S RECORDKEEPING AND ENFORCEMENT REQUIREMENTS ON THE DEVELOPMENT AND DEPLOYMENT OF NEW COMMUNICATIONS TECHNOLOGIES

36. Section 717(b)(1)(G) requires the Commission to provide an assessment of the effect of the requirements of section 717 on the development and deployment of new communications technologies.⁸³ No commenters surfaced this issue as a concern. We find that there has been no effect on the development and deployment of new communications technologies.

VII. CONCLUSION

37. Positive developments regarding the accessibility of telecommunications and advanced communications services and equipment have continued over the past two years. This report also recounts developments in new communications platforms. As we continue to monitor accessibility developments and gaps, Congress may wish to examine whether the CVAA should evolve to keep pace with technological developments. Based on commenters' input and the resolution of complaints, we recognize the importance of active stakeholder engagement, and are encouraged by the stakeholders' continued collaboration to ensure accessibility for millions of Americans with disabilities.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

⁸³ 47 U.S.C. § 618(b)(1)(G).

APPENDIX**List of Commenters****(CG Docket No. 10-213)**

The complete record in this proceeding is available in the Commission's Electronic Comment Filing System located at <https://www.fcc.gov/ecfs/>.

Assessment Commenters

Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the 2024 Biennial Report Required by the Twenty-First Century Communications and Video Accessibility Act, CG Docket No. 10-213, Public Notice, DA 24-206 (CGB Mar. 7, 2024) (2024 CVAA Assessment Public Notice).

<u>Abbreviation</u>	<u>Commenter</u>
AAO	TDIforAccess, Inc., Communication Service for the Deaf, National Association of the Deaf, Hearing Loss Association of America, and the Registry of Interpreters for the Deaf, Inc. (together, the Accessibility Advocacy Organizations)
CTA	Consumer Technology Association
CTIA	CTIA

Tentative Findings Commenters

Consumer and Governmental Affairs Bureau Seeks Comment on Tentative Findings for the 2024 Twenty-First Century Communications and Video Accessibility Act Biennial Report, CG Docket No. 10-213, Public Notice, DA 24-691 (CGB July 16, 2024) (2024 CVAA Tentative Findings Public Notice).

<u>Abbreviation</u>	<u>Commenter</u>
AAO	TDIforAccess, Inc., Communication Service for the Deaf, National Association of the Deaf, Hearing Loss Association of America, and the Registry of Interpreters for the Deaf, Inc. (together, the Accessibility Advocacy Organizations)
CTIA	CTIA
Wisconsin OPIL	Wisconsin Department of Health Services, Office for the Promotion of Independent Living

**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: October 8, 2024**Released: October 8, 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 are being or may be impacted by Hurricane Milton, including DPAs East2, East13, East14, East15, East16, East17, East18, East19, East20, and East21 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Hurricane Milton is currently a Category 4 storm and is expected to make landfall on the west coast of Florida on Wednesday, October 9 as a major hurricane, bringing with it intense winds and rainfall.³ Hurricane Milton is currently forecast to remain a hurricane as it crosses the Florida peninsula.⁴ 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 Oct. 7, 2024) (Waiver Request), <https://www.fcc.gov/ecfs/document/10072774624268/1>; see also State of Florida, Office of Governor Ron DeSantis, *Governor Ron DeSantis Issues Updates on State Preparedness Efforts for Hurricane Milton* (Oct. 7, 2024), <https://www.flgov.com/2024/10/07/governor-ron-desantis-issues-updates-on-state-preparedness-efforts-for-hurricane-milton/>; The White House, *President Joseph R. Biden, Jr. Approves Florida Emergency Declaration* (Oct. 7, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/10/07/president-joseph-r-biden-jr-approves-florida-emergency-declaration-9/>.

² 47 CFR § 96.67(c)(2)-(3).

³ See Waiver Request at 1; National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Milton Advisory 14, 10:00 AM CDT Tue Oct. 8, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?start#contents.

⁴ National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Milton Advisory 14, 10:00 AM CDT Tue Oct. 8, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?start#contents.

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 Milton. Google 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 Milton.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 asserts that while all ESC sensors in the projected path of Milton 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

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.

sensor equipment.”¹² 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.”¹³ 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.”¹⁴ Accordingly, we grant a waiver of sections 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 events¹⁵ 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 22, 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 Milton, 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

¹² Waiver Request at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ See e.g., *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 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

**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: October 8, 2024**Released: October 8, 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 Hurricane Milton, including DPAsEast2, East13, East14, East15, East16, East17, East18, East19, East20, and East21 (the DPAs, together with the affected ESCs in such DPAs, the Impacted Systems). Hurricane Milton is currently a Category 4 storm and is expected to make landfall on the west coast of Florida on Wednesday, October 9 as a major hurricane, bringing with it intense winds and rainfall.³ Hurricane Milton is currently forecast to remain a hurricane as it crosses the Florida peninsula.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 Oct. 7, 2024) (Waiver Request) <https://www.fcc.gov/ecfs/document/1007141600165/1>; see also State of Florida, Office of Governor Ron DeSantis, *Governor Ron DeSantis Issues Updates on State Preparedness Efforts for Hurricane Milton* (Oct. 7, 2024), <https://www.flgov.com/2024/10/07/governor-ron-desantis-issues-updates-on-state-preparedness-efforts-for-hurricane-milton/>; The White House, *President Joseph R. Biden, Jr. Approves Florida Emergency Declaration* (Oct. 7, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/10/07/president-joseph-r-biden-jr-approves-florida-emergency-declaration-9/>.

² 47 CFR § 96.67(c)(2)-(3).

³ See Waiver Request at 1; National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Milton Advisory 14, 10:00 AM CDT Tue Oct. 8, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?start#contents.

⁴ See National Hurricane Center and Central Pacific Hurricane Center, Key Messages for Hurricane Milton Advisory 14, 10:00 AM CDT Tue Oct. 8, 2024, https://www.nhc.noaa.gov/graphics_at4.shtml?start#contents.

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 Milton. 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 Milton.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

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.

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 4,000 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 sections 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 events¹⁷ 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 22, 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 Milton, we find that these are unique circumstances that make application of the rules inequitable, unduly burdensome, and contrary to the

(Continued from previous page) _____

¹³ See *id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ See e.g., *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).

public interest. For these reasons, we find it is in the public interest to conditionally grant Petitioner's request for an emergency waiver of sections 96.67(c)(2) and (3), on a time-limited basis and subject to conditions described herein.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the request filed by Federated Wireless, 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



DA 24-1058

Released: October 11, 2024

FCC TO ACCEPT APPLICATIONS FOR FALL 2025 ATTORNEY HONORS PROGRAM

**Application Window Runs from October 11 to November 21, 2024;
Submit Applications via USAJOBS**

WASHINGTON, October 11, 2024 – The Federal Communications Commission (FCC) today announced that it will begin accepting applications from graduating law students, recent law school graduates, and current judicial clerks for its Fall 2025 Attorney Honors Program. The application window opens today, Friday, October 11, 2024, and closes on Thursday, November 21, 2024.

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

Participants selected for the Attorney Honors Program will serve in a two-year employment and training program designed to introduce them to the field of communications law and policy and to provide a wide variety of learning experiences. The FCC encourages law students in their final year of study, recent law students who graduated in the spring or summer of 2024, and current judicial clerks with superior academic credentials who are interested in public service and/or communications law to apply for the Fall 2025 class. Applications must be received by 11:59 p.m. EST on November 21, 2024. The deadline for other main U.S. time zones is: 10:59 p.m. Central Time, 9:59 p.m. Mountain Time, and 8:59 p.m. Pacific Time. Incomplete or late applications will not be considered.

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

For the Fall 2025 application cycle, the FCC will use the FCCJobs web-based recruitment system, which integrates with the Office of Personnel Management's USAJOBS website. Interested persons should apply via USAJOBS to Vacancy Announcement: [HonorsAtty-OGC-2025-001](#). Submission of the following documents is required: a cover letter, resume, official or unofficial law school transcript, writing sample (of not more than 15 pages), and a list of three professional references. Please submit these documents as separate attachments to your online application. We recommend that you double check to ensure that all required parts of your application have been successfully uploaded in USAJOBS. For further information, please visit the Attorney Honors Program webpage at www.fcc.gov/attorneyhonorsprogram or direct questions to honors.program@fcc.gov.

-FCC-

**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	)	CC 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 9, 2024

Released: October 9, 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 Milton and its immediate aftermath (collectively, the Milton Weather Events). This same relief also applies to any other areas that may be subject to future Emergency Declarations or Major Disaster Declarations signed by the President due to hurricanes, typhoons, tropical storms, tropical cyclones, and wildfires during the remainder of calendar year 2024.

2. Hurricane Milton is a hurricane moving through the Gulf of Mexico and is expected to impact Florida. The Milton Weather Events are expected to cause 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 *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. 11-42, 21-93, 02-60, 10-90, 06-122, Order, DA 24-1025 (WCB rel. Oct. 1, 2024) (*Hurricane Helene Order*); *Affordable Connectivity Program*; *Lifeline and Link Up Reform and Modernization*; *Schools and Libraries Universal Service Support Mechanism*; *Establishing the Emergency Connectivity Fund to* (continued....)

II. BACKGROUND

3. On Wednesday, October 9, 2024, Hurricane Milton is anticipated to make landfall on Florida's Gulf Coast and is expected to cause historic flooding, significant infrastructure damage, and communications blackouts to affected areas in Florida.³ The President has approved an Emergency Declaration for the State of Florida, allowing authorities to provide disaster relief.⁴

III. DISCUSSION

4. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain USF Program deadlines for areas affected by natural disasters.⁵ Generally, the Commission's rules may

(Continued from previous page)

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, 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 Rachel Treisman, NPR, *Fast-growing Hurricane Milton is officially a Category 5 storm as it nears Florida* (Oct. 7, 2024), <https://www.npr.org/2024/10/07/nx-s1-5142961/hurricane-milton-florida-evacuations>; CBS News, *Maps show track of Hurricane Milton as forecasters predict landfall in Florida this week* (Oct. 7, 2024), <https://www.cbsnews.com/news/hurricane-milton-maps-florida-forecast-tampa-bay-landfall/>.

⁴ See The White House, President Joseph R. Biden, Jr Approves Florida Emergency Declaration (Oct. 7, 2024) <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/10/07/president-joseph-r-biden-jr-approves-florida-emergency-declaration-9/>. We refer to Hurricane Milton and all associated weather impacts as the Milton Weather Events. Similarly, we refer to the Emergency Declaration as Milton Weather Event Declarations.

⁵ 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 (continued....)

be waived for good cause shown.⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸

5. In response to the anticipated damage from the Milton 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.⁹ For the purposes of the waivers we grant today related to Hurricane Milton, we define "Affected Disaster Areas" as the areas covered by the Milton Weather Event Declarations and any other Emergency Declarations or Major Disaster Declarations pertaining to the Milton Weather Events, including declarations issued related to the Milton Weather Events after release of this Order. Additionally, the relief provided herein applies to areas subject to future Emergency Declarations or Major Disaster Declarations signed by the President due to hurricanes, typhoons, tropical storms, tropical cyclones, and wildfires during the remainder of calendar year 2024.¹⁰ In the event of a future Emergency Declaration or Major Disaster Declaration covered under these waivers, the Bureau will release information on the scope of the Affected Disaster Areas.

A. Lifeline

6. 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), 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 December 15, 2024.¹¹ The waiver period for these rules will expire December 15, 2024. Given the anticipated

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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*).

⁶ 47 CFR § 1.3.

⁷ *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).

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ 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. The Wireline Competition Bureau recently granted partial waiver of the Commission's rules regarding aging of telephone numbers for residents impacted by Hurricane Helene and by certain future weather events in 2024. *Telephone Number Portability; Numbering Resource Optimization*, Order, DA 24-1024 (WCB Oct. 1, 2024). We now amend that partial waiver as it applies to future weather events in 2024 to align with the scope of relief provided herein.

¹⁰ Waiver of section 54.507(d)(4) of the Commission's rules is excluded from relief provided for future Emergency Declarations or Major Disaster Declarations in the remainder of calendar year 2024 because the E-Rate program non-recurring service implementation deadline was September 30, 2024. We grant waiver of this lapsed deadline for Affected Disaster Areas related to the Milton Weather Events because much of Florida was impacted by Hurricane Helene which made landfall prior to the deadline.

¹¹ See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

devastation from the Milton 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.¹² For areas subject to future Emergency Declarations or Major Disaster Declarations signed by the President due to hurricanes, typhoons, tropical storms, tropical cyclones, and wildfires during the remainder of calendar year 2024, we waive the Lifeline non-usage and recertification requirements for 60 days after the incident date.

7. To promote the maintenance and rebuilding of communities affected by the hurricane, and future disasters in 2024, 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.¹³ 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.¹⁴ Waiving these rules will help low-income consumers retain access to emergency communications services during this and other future natural disasters in 2024. 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.¹⁵

8. 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 December 15, 2024.¹⁶ 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.¹⁷ 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 Milton Weather Events or other future disasters in 2024 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.

9. 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 October 5, 2024.¹⁸ 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

¹² 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).

¹³ 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

¹⁴ See *id.*

¹⁵ After the end of the waiver period, the subscriber will have 30 days (beginning on December 16, 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 January 15, 2025. In the event of a future disaster, the Bureau will provide guidance on the restart date for the non-usage rules.

¹⁶ 47 CFR §§ 54.405(e)(4), 54.410(f).

¹⁷ See 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

¹⁸ In the event of a future applicable disaster, the Bureau will provide the relevant date for USAC to refrain from de-enrollments.

recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules. Additionally, to the extent that a Lifeline subscriber successfully completes their recertification process in 2025, they would not be required to undergo Lifeline recertification again in 2025.

10. 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 Milton Weather Events, or any future hurricane, typhoon, tropical storm, tropical cyclone, or wildfire in 2024, significantly impacts 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

11. 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 Milton Weather Events.

12. *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 October 5, 2024,¹⁹ and provide those affected with up to 150 calendar days from the release date of this Order to submit the required filing:²⁰

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.²¹
- Filing FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).²²
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).²³

¹⁹ 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 the Milton Weather Events may submit the required filings up to 150 calendar days from the release date of this Order.

²⁰ 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. With regard to relief for future hurricanes or other applicable future disasters occurring in 2024, the waiver and relief period will begin on the first day of the incident period and will expire 150 days later.

²¹ 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.

²² 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).

²³ 47 CFR § 54.514(a). Given the significant damage expected from the Milton Weather Events, and any similar disasters in 2024, 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

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13. *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. In light of the recent impact of Hurricane Helene and anticipated impact of the Milton Weather Events, we understand some applicants in the Affected Disaster Areas may not be able to complete the installation of internal connections and other non-recurring services by the September 30, 2024 deadline for Funding Year (FY) 2023. Consistent with the actions taken for areas affected by Hurricane Helene,²⁴ 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

14. *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

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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, 99-200, WC Docket Nos. 21-450, 11-42, 02-60, 10-90, 06-122, Order, 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); *Hurricane Helene Order* at * 5, para. 11 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Helene); *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).

²⁴ *See Hurricane Helene Order*, at *6, para. 12.

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); *Hurricane Helene Order*, at *6-7, para. 13 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Helene).

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

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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 may be disrupted, destroyed, or rendered unusable by the Milton Weather Events or other applicable future disasters in 2024, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or product that it is replacing.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

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(2003).

²⁸ 47 CFR § 54.504(d)(1)(iv).

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 Milton or other applicable future disasters in 2024 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

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Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

15. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may lose records as a result of the destruction caused by the Milton Weather Events and any future disasters in 2024. We waive section 54.516(a) of our rules with respect to such destroyed records, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.³⁴ Applicants and service providers will not be penalized for failure to retain or produce records destroyed by the hurricane or other applicable future disasters. 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 Milton Weather Events or other applicable disasters in 2024. 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 Milton Weather Events or other applicable disasters in 2024, including records relating to any relief granted by this Order.

16. We find that the significant property damage, power outages, and disruptions in services anticipated to be caused by the Milton Weather Events in the Affected Disaster Areas, and any applicable future disaster in 2024 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 Milton Weather Events and any applicable future disaster in 2024, 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

17. 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 Milton Weather Events or any applicable future disaster in 2024.

18. *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

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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).

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).

and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of the Milton Weather Events or applicable future 2024 disasters, 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 For future applicable disasters occurring in 2024, the waiver and relief period will begin on the first day of the incident period and will expire 150 days later.

19. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may lose records in the destruction caused by the Milton Weather Events or applicable future disasters in 2024, 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 Milton Weather Events or other applicable future disaster in 2024. 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 or other applicable future disaster in 2024. 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 or other applicable future disaster in 2024, including records relating to any relief granted by this Order.

D. Rural Health Care Program

20. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the five-year documentation retention and production rules for participating health care providers and service providers whose documents are destroyed by the Milton Weather Events; and (4) the invoice deadline.

21. *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

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 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); *Hurricane Helene Order*, at *8, para. 17 (waiving USAC's ECF administrative deadlines associated with USAC's information requests in the aftermath of Hurricane Helene).

³⁹ 47 CFR § 54.1715(b); see also 47 CFR § 54.720.

⁴⁰ 47 CFR § 54.720(a)-(b).

appropriate measure to accommodate the extraordinary circumstances anticipated to be caused by the Milton Weather Events, and any applicable future disaster in 2024. We understand that the disruptions anticipated to be caused by the Milton Weather Events and applicable future disaster in 2024 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 October 5, 2024, through 150 calendar days from the release of this Order. For future hurricanes and any other applicable future disaster occurring in 2024, the waiver and relief period will begin on the first day of the incident period and will expire 150 days later.

22. *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 Milton Weather Events, health care providers in the Affected Disaster Areas may find it necessary to divert their 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 October 5, 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. For future hurricanes or other applicable disasters occurring in 2024, the waiver and relief period will begin on the first day of the incident period and will expire 150 days later.

23. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may lose records in the destruction anticipated to be caused by the Milton Weather Events, or other applicable future disaster in 2024. 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.⁴² 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 Milton Weather Events or any future applicable disaster in 2024. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the hurricane or other future similar disaster in 2024, 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.⁴³

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*).

⁴² 47 CFR § 54.631(b).

⁴³ 47 CFR § 54.627(a).

Program participants may request a one-time extension of the invoice filing deadline.⁴⁴ If the extension is timely requested, USAC is required to grant a 120-day extension.⁴⁵ We find that waiving the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances anticipated to be caused by the Milton Weather Events and any future applicable disaster in 2024. We also understand that the disruptions anticipated to be caused by the Milton Weather Events and any future applicable disaster in 2024 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.

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 the fourth quarter of 2024.

26. 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.⁴⁶ 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).⁴⁷ Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.⁴⁸

27. Given the substantial service disruptions and outages expected to be caused by the Milton Weather Events and any future applicable disaster in 2024, affected carriers may find it extremely difficult and burdensome to conduct performance testing in the fourth quarter of 2024. 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.”⁴⁹ We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of the hurricane and other applicable future disasters in 2024, their anticipated impact, and recovery efforts, as this waiver relieves affected carriers from the additional burden of filing a petition.⁵⁰

⁴⁴ 47 CFR § 54.627(b).

⁴⁵ *Id.*

⁴⁶ 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).

⁴⁷ See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

⁴⁸ 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.

⁴⁹ See *First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

⁵⁰ Consistent with precedent, we find that given the expected damage from Hurricane Milton, and any future similar disaster in 2024, extraordinary circumstances exist warranting a waiver of the performance measures testing requirement for the fourth quarter of 2024. See *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* (continued....)

28. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,⁵¹ the extreme nature of the Milton Weather Events and any future applicable disasters in 2024 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 their networks and certify the results to be part of the compliance calculations. However, pursuant to this waiver, they are not required to do so.⁵²

F. Contributions

29. 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 expected to be caused by the Milton Weather Events may render many providers unable to serve the Affected Disaster Areas. We find that these extremely unusual circumstances, and for future similar disasters in 2024, warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,⁵³ and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

30. *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 Milton Weather Events, and any future applicable disaster in 2024, 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.

31. We next temporarily waive sections 54.713(b)-(c) of the Commission's rules for providers located in the Affected Disaster Areas.⁵⁴ 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, 2025.⁵⁵ We extend this temporary waiver to consultants and third-party preparers that are based in Affected Disaster Areas and whose operations may likely sustain damage due to the Milton Weather Events, or future applicable disasters, thus preventing them from meeting the November 1 FCC

(Continued from previous page) _____

Contribution Methodology, CC Docket No. 02-6, WC Docket Nos. 11-42, 21-93, 02-60, 10-90, 06-122, Order, DA 24-1025, at * 11, paras. 25-28 (WCB Oct. 1, 2024) (*Hurricane Helene Order*) (waiving the fourth quarter performance measures testing requirements for affected disaster areas impacted by Hurricane Helene).

⁵¹ *Id.*

⁵² We appreciate that in the aftermath of the hurricane, and any applicable future disaster in 2024, affected carriers will need time to assess their networks in the Affected Disaster Areas, and we will evaluate at a later time whether relief from the applicable deployment milestones is warranted.

⁵³ *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).

⁵⁴ 47 CFR § 54.713(b)-(c).

⁵⁵ 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.

Form 499-Q deadline. We find that this temporary waiver will prevent these groups whose operations may likely be substantially impacted by the Milton Weather Events, and any future applicable disaster in 2024, 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.

32. *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),⁵⁶ stated in Part 1 of the Commission's rules, describe specific provisions which include a rule commonly referred to as the red light rule.⁵⁷ 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.⁵⁸ 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.⁵⁹ USAC will withhold all program support payments to that entity and any associated entities until the delinquency has been satisfied.⁶⁰ Although entities owing debts to the government generally should not receive further benefits from it, we find that the disruption expected to be caused by the Milton Weather Events, and any applicable future disaster in 2024, 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.

33. *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.⁶¹ Consistent with the additional relief provided for contributors impacted by the Milton Weather Events and any applicable future disasters in 2024, 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, 2025.⁶²

34. 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 Milton Weather Events and any applicable future disaster in 2024 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.⁶³

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

⁵⁷ *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).

⁵⁸ See 47 CFR § 1.1910(b).

⁵⁹ 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).

⁶⁰ *Id.*

⁶¹ *Id.*; see also 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) and 901.1; 47 CFR § 1.1917.

⁶² See 31 U.S.C. § 3711(a)(3); 31 CFR § 903.2(a)(2).

⁶³ 47 CFR § 1.3.

G. Protecting Program Integrity

35. 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 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

36. 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), 54.507(d)(4), 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



PUBLIC NOTICE

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

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

DA No. 24-1060

Report No. TEL-02397

Thursday, October 10, 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).

IPC-214-20231212-001A9

Univast LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Facilities-Based Service; Global or Limited Global Resale Service

Grant of Authority:

Date of Action: 10/08/2024

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

Univast, a Wyoming limited liability company, is wholly owned by Ben Omoshin Adeniyi, a citizen of Nigeria.

Pursuant to Commission practice, the application for international section 214 authority was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On September 23, 2024, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time re the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

ITC-ASG-20240729-00123 E BT Quartz Paddington, LLC
Assignment
Grant of Authority Date of Action: 10/09/2024

Current Licensee: BT Americas Holdings Inc.

FROM: BT Americas Holdings Inc.

TO: BT Quartz Paddington, LLC

On July 29, 2024, BT Quartz Paddington, LLC (BTQP) filed a notification of the pro forma assignment of international section 214 authority for global facilities-based and resale service from BT Americas Holdings Inc. (BTAH) to BTQP, effective June 30, 2024. BTQP is a direct wholly owned subsidiary of BT Americas Inc. (BTA) and an indirect wholly owned subsidiary of BTAH, all Delaware corporations. BTAH is an indirect wholly owned subsidiary of British Telecommunications plc (BT plc), an England and Wales entity.

As part of an internal reorganization, BTAH is assigning part of its international authority to BTQP. BTAH will retain its international section 214 authorizations (ITC-214-20020306-00105, ITC-214-19981019-00794 and ITC-21419990609-00340). BTQP is assigned a new international 214 authorization for global facilities-based and resale service (ITC-214-20240729-00148).

In addition, BTA transferred to BTQP the assets, properties, contacts and rights relating to the Radianz business in the United States. Following contribution of the Radianz assets to BTQP, it entered into a contract for BTA to provide service to the Radianz customers using the facilities now owned by BTQP. BTA provides international service under the international section 214 authority held by BTAH (ITC-214-20020306-00105, ITC-214-19981019-00794 and ITC-21419990609-00340) pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

BTQP acknowledges that the commitments made by BT plc with respect to the U.S. facilities of BT plc and its subsidiaries apply to BTQP. See Letter of Assurances, dated January 12, 2005, from Tim Cowen, General Counsel, BT Global Services, to Laura H. Parsky, U.S. Department of Justice, Tina W. Gabbrielli, U.S. Department of Homeland Security, and Patrick W. Kelley, U.S. Department of Justice (2005 LOA). A copy of the 2005 LOA is publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching ITC-214-20240729-00148 or ITC-ASG-20240729-00123 and accessing "Other filings related to this application" from the Document Viewing area.

ITC-ASG-20240729-00124 E BT Quartz Euston, LLC
Assignment
Grant of Authority Date of Action: 10/09/2024

Current Licensee: BT Americas Holdings Inc.

FROM: BT Americas Holdings Inc.

TO: BT Quartz Euston, LLC

On July 29, 2024, BT Quartz Euston, LLC (BTQE) filed a notification of the pro forma assignment of international section 214 authority for global facilities-based and resale service from BT Americas Holdings Inc. (BTAH) to BTQE, effective June 30, 2024. BTQE is a direct wholly owned subsidiary of BT Americas Inc. (BTA) and an indirect wholly owned subsidiary of BTAH, all Delaware corporations. BTAH is an indirect wholly owned subsidiary of British Telecommunications plc (BT plc), an England and Wales entity.

As part of an internal reorganization, BTAH is assigning part of its international authority to BTQE. BTAH will retain its international section 214 authorizations (ITC-214-20020306-00105, ITC-214-19981019-00794 and ITC-21419990609-00340). BTQE is assigned a new international 214 authorization for global facilities-based and resale service (ITC-214-20240729-00149).

In addition, BTA transferred to BTQE the assets, properties, contacts and rights relating to the Trading and Command business in the United States. Following contribution of the Trading and Command assets to BTQE, it entered into a contract for BTA to provide service to the Trading and Command customers using the facilities now owned by BTQE. BTA provides international service under the international section 214 authority held by BTAH (ITC-214-20020306-00105, ITC-214-19981019-00794 and ITC-21419990609-00340) pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

BTQE acknowledges that the commitments made by BT plc with respect to the U.S. facilities of BT plc and its subsidiaries apply to BTQE. See Letter of Assurances, dated January 12, 2005, from Tim Cowen, General Counsel, BT Global Services, to Laura H. Parsky, U.S. Department of Justice, Tina W. Gabbrielli, U.S. Department of Homeland Security, and Patrick W. Kelley, U.S. Department of Justice (2005 LOA). A copy of the 2005 LOA is publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching ITC-214-20240729-00149 or ITC-ASG-20240729-00124 and accessing "Other filings related to this application" from the Document Viewing area.

ITC-T/C-20240610-00103 E

Sprint Communications Company L.P.

Transfer of Control

Grant of Authority

Date of Action: 10/08/2024

Current Licensee: Sprint Communications Company L.P.

FROM: COGENT INFRASTRUCTURE INC

TO: Cogent Infrastructure, LLC

On June 10, 2024, Sprint Communications Company L.P. (SCCLP), a Delaware limited partnership that holds international section 214 authorizations (ITC-214-19950818-00039, ITC-214-19990325-00153, ITC-214-20221010-00118, ITC-MOD-20191025-00173, ITC-MOD-20200221-00034), filed a notification of the pro forma transfer of control of SCCLP from Cogent Infrastructure, Inc. to Cogent Infrastructure, LLC, effective April 5, 2024. The Applicants filed a supplement on September 26, 2024.

Prior to the transaction SCCLP was an indirect wholly owned subsidiary of Cogent Infrastructure, Inc. On April 5, 2024, Cogent Infrastructure, Inc. converted from a Delaware corporation to a Delaware limited liability company, Cogent Infrastructure, LLC. As a result, SCCLP is now an indirect wholly owned subsidiary of Cogent Infrastructure, LLC.

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-MS-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 or 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
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DA No. 24-1061

Report No. SCL-00490

Thursday, October 10, 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 Rod 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-20240610-00024 E

Sprint Communications Company L.P.

Transfer of Control

Grant of Authority

Date of Action: 10/08/2024

Current Licensee: Sprint Communications Company L.P.

FROM: COGENT INFRASTRUCTURE INC

TO: Cogent Infrastructure, LLC

On June 10, 2024, Sprint Communications Company L.P. (SCCLP) filed a notification of the pro forma transfer of control of SCCLP from Cogent Infrastructure, Inc. to Cogent Infrastructure, LLC, effective April 5, 2024. SCCLP, a Delaware limited partnership, is a licensee on the Americas-II cable system (SCL-MOD-20191202-00039, SCL-LIC-19980429-00019), the Japan-United States cable system (SCL-MOD-20130227-00002; SCL-LIC-19981117-0025), the Maya-1 cable system (SCL-MOD-20110928-00028, SCL-LIC-19990325-00006), and the Taino-Carib cable system (SCL-LIC-20180702-00019). The Applicant filed a supplement on September 26, 2024.

Prior to the transaction, SCCLP was an indirect wholly owned subsidiary of Cogent Infrastructure, Inc. On April 5, 2024, Cogent Infrastructure, Inc. converted from a Delaware corporation to a Delaware limited liability company, Cogent Infrastructure, LLC. As a result, SCCLP is now an indirect wholly owned subsidiary of Cogent Infrastructure, LLC.

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

In the Matter of	)	
	)	
Request for Waiver of the Hearing Aid	)	CG Docket No. 18-307
Compatibility Volume Control Reset Rules	)	
	)	
CaptionCall, LLC	)	

ORDER

Adopted: October 10, 2024

Released: October 10, 2024

By the Acting Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau:

1. By this Order, the Consumer and Governmental Affairs Bureau of the Federal Communications Commission (FCC or Commission) grants CaptionCall, LLC (CaptionCall), a waiver of the volume control reset requirement in section 68.317 of the Commission's rules.¹ Under section 68.317, wireline telephones may exceed the maximum volume specified in the rule, but must automatically reset to a lower level after the telephone is hung up.² Telephones covered by this waiver can be used by persons with hearing loss without the need to turn the volume back up before each use.

2. *Background.* Pursuant to the Commission's streamlined waiver process,³ CaptionCall seeks a waiver of the volume control reset provisions for its 88T Internet Protocol Captioned Telephone Service device (88T Device) "so that persons with hearing loss can set a default volume above the maximum allowed level [for the 88T Device] and not have to turn the volume back up each time they use it."⁴ CaptionCall states that the 88T Device supports both public switched telephone network (PSTN) and Voice over Internet Protocol (VoIP) services.⁵

¹ See 47 CFR § 68.317(h); Letter from Ryan Sullivan, Chief Product Officer, CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC (June 13, 2024) (CaptionCall Waiver Request).

² 47 CFR § 68.317(h); see *Access to Telecommunications Equipment and Services by Persons with Disabilities; Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets; Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations*, CG Docket No. 13-46, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9066-70, paras. 7-15 (2017) (*2017 HAC Order*) (amending section 68.317 to incorporate a revised volume control standard and a new volume control reset requirement).

³ See *Tandy Corporation, Walker Equipment Company, Ameriphone, Inc., and Ultratec, Inc., Request for Waiver of Volume Control Reset*, 47 C.F.R. § 68.317(f), NSD-L-00-17 et al., Memorandum Opinion and Order, 16 FCC Rcd 5253, 5258, para. 15 (CCB 2001) (*Tandy Corporation Waiver Order*); *Requests for Waiver of Volume Control Reset Rules, ClearCaptions, LLC*, CG Docket No. 18-307, Order, 33 FCC Rcd 11602, 11604-05 (CGB 2018) (*ClearCaptions Waiver Order*) (providing and applying a modified streamlined waiver process); *Notice of New Docket and Filing Procedures for Requesting Waiver of Wireline Hearing Aid Compatibility Volume Control Reset Rules*, CG Docket No. 18-307, Public Notice, 33 FCC Rcd 11598, 11599-600 (CGB 2018) (*Volume Control Reset Waiver Public Notice*) (providing a new docket number and updating the procedure for requesting a streamlined waiver).

⁴ CaptionCall Waiver Request at 2; see also *Request for Waiver of the Hearing Aid Compatibility Volume Control Reset Rules, CaptionCall, LLC*, CG Docket No. 18-307, Order, 34 FCC Rcd 8174 (CGB 2019) (granting CaptionCall a waiver of the rule with respect to its 78T device); *Request for an Amended Waiver of the Hearing Aid* (continued....)

3. *Volume Control Standard.* Section 68.317 of the Commission's rules governs the provision of volume control on wireline telephones used with the PSTN and telephonic equipment used with advanced communications services (ACS) such as VoIP service (ACS telephonic CPE).⁶ Wireline telephones and ACS telephonic CPE that are manufactured or imported for use in the United States on or after February 28, 2020, must comply with the volume control standard in section 68.317(h).⁷

4. This volume control standard uses a unit of volume measurement called "Conversational Gain" to specify amplification levels.⁸ To help ensure that people with hearing loss can use a telephone, the volume control standard allows the receive amplification to exceed the specified maximum level (24 dB Conversational Gain), provided that the amplification level automatically resets to a lower level (no more than 24 dB Conversational Gain) after the telephone is hung up.⁹ As outlined in section 68.317(h), the reset requirement is designed to help minimize the likelihood of harming individuals with normal hearing who may use the telephone after someone else has increased the volume beyond a certain level.¹⁰ However, the reset requirement can hinder effective use of a telephone by consumers with hearing loss who regularly require amplification above the specified maximum.¹¹ Therefore, the Commission in the *2001 Tandy Corporation Waiver Order* adopted a streamlined process for handling requests for waiver of the reset requirement to allow Part 68 registration of telephones specifically designed to meet such consumers' needs.¹² For devices manufactured pursuant to such waivers, a person with hearing loss can use the telephone without having to turn the volume back up before each use.¹³

5. *Streamlined Waiver Process.* The streamlined waiver process adopted in the *2001 Tandy Corporation Waiver Order* was modified in the *ClearCaptions Waiver Order* and *Volume Control Reset Waiver Public Notice* for use with the current volume control standard.¹⁴ Pursuant to this streamlined process, petitioners that satisfy five safety conditions will ordinarily receive the grant of a waiver. Those conditions are:

- (1) The volume reset override switch shall be labeled as such and located on the PSTN telephone or ACS telephonic CPE in such a way as not to be accessible to accidental engagement.
- (2) A bright indicator light shall be prominently displayed on the front of the PSTN telephone or ACS telephonic CPE and shall light up when the override is engaged, and the telephone is placed in an off-hook condition.

(Continued from previous page) _____
Compatibility Volume Control Reset Rules, CaptionCall, LLC, CG Docket No. 18-307, Order, 36 FCC Rcd 14616 (CGB 2021) (granting an amended waiver encompassing a new version of CaptionCall's 78T device, the 78TX).

⁵ CaptionCall Waiver Request at 1-2 n.3.

⁶ See 47 CFR § 68.6 (requiring that wireline telephones manufactured or imported for use in the United States comply with 47 CFR § 68.317); *id.* § 68.501(a) (requiring that ACS telephonic CPE be certified as hearing aid compatible). ACS telephonic CPE is defined as customer premises equipment (CPE) used with ACS "that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, except for mobile handsets." *Id.* § 68.3.

⁷ 47 CFR § 68.317(a)(2).

⁸ See *id.* § 68.317(h).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Tandy Corporation Waiver Order*, 16 FCC Rcd at 5255-56, para. 9.

¹² *Id.* at 5257-58, paras. 13-15.

¹³ See *id.* at 5255-56, para. 9.

¹⁴ *ClearCaptions Waiver Order*, 33 FCC Rcd at 11604, para. 6; *Volume Control Reset Waiver Public Notice*, 33 FCC Rcd at 11599-600.

- (3) Next to the light shall be a warning that the amplification is at a high level.
- (4) A caution on using the volume reset override switch shall be included in the users' manual.
- (5) The PSTN telephone or ACS telephonic CPE shall include a warning printed in Braille that can be securely attached to the back of the handset, or, if the telephone has only a headset, above the dial buttons, to indicate that a high-volume setting may be engaged.¹⁵

6. A party may request a volume control reset waiver for a device by certifying its compliance with the aforementioned five safety conditions.¹⁶ The request must be signed "by a company representative or officer responsible for its truthfulness."¹⁷ If the request is in order and if no other issues are present that preclude a grant, the Commission will issue an order granting the waiver request.¹⁸ The party receiving such a waiver may then pursue equipment approval under the applicable Part 68 rules.¹⁹

7. *Discussion.* We grant a waiver of the volume control reset requirements in sections 68.317(g) and (h) to CaptionCall for the 88T Device because we find that CaptionCall has properly certified compliance with the streamlined waiver conditions of the *Tandy Corporation Waiver Order*, as modified by the *ClearCaptions Waiver Order* and the *Volume Control Reset Waiver Public Notice*.²⁰ Grant of the combined waiver will afford persons with hearing loss the option of using their telephones without the need to turn the volume back up each time they use the phone. CaptionCall may therefore proceed to request certification from a Telecommunications Certification Body or to submit a Supplier's Declaration of Conformity pursuant to Part 68 of the Commission's rules.²¹

8. We condition the grant of this waiver on the following requirements for the 88T Device: (1) the volume reset override switch shall be labeled as such and located on the phone in such a way as to not be accessible to accidental engagement; (2) a bright indicator light shall be prominently displayed on the front of the phone and shall light up when the override is engaged and the phone is placed in an off-hook condition; (3) next to the light shall be a warning that the amplification is at a high level; (4) a caution on the use of the volume reset override switch shall be included in the users' manual; and (5) the phone shall include a warning printed in Braille that can be securely attached to the back of the handset, or, if the phone has only a headset, above the dial buttons, to indicate that a high-volume setting may be engaged.

9. Accordingly, IT IS ORDERED that, pursuant to authority delegated in sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the request for waiver of the volume control reset requirements of sections 68.317(g) and (h) of the Commission's rules, 47 CFR § 68.317(g)-(h), for the 88T Device filed by CaptionCall, LLC, IS GRANTED to the extent described herein.

¹⁵ *ClearCaptions Waiver Order*, 33 FCC Rcd at 11604, para. 6; *Volume Control Reset Waiver Public Notice*, 33 FCC Rcd at 11599-600.

¹⁶ *ClearCaptions Waiver Order*, 33 FCC Rcd at 11604, para. 6; *Volume Control Reset Waiver Public Notice*, 33 FCC Rcd at 11600.

¹⁷ *ClearCaptions Waiver Order*, 33 FCC Rcd at 11604, para. 6; *Volume Control Reset Waiver Public Notice*, 33 FCC Rcd at 11600.

¹⁸ *Tandy Corporation Waiver Order*, 16 FCC Rcd at 5258, para. 15.

¹⁹ *Id.*

²⁰ CaptionCall Waiver Request at 2-3.

²¹ See 47 CFR § 68.201.

10. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joshua Mendelsohn
Acting Chief, Disability Rights Office
Consumer and Governmental Affairs 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 24-1064

Released: October 10, 2024

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

WC Docket No(s). 24-292

Comments Due: October 25, 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 10, 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,

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f)(1) (stating, in relevant part, that an application filed by a 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."). See also 47 CFR § 63.71(f)(2)(i) (stating that "[a]n application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted... if: The applicant provides affected customers with the notice required under paragraph (a)(6) of this section, and the application contains the showing or certification described in § 63.602(b)").

absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **October 25, 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

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

⁶ 47 CFR § 1.1200 *et seq.*

proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

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

– FCC –

Appendix

- 1) **Applicant(s): Qwest Corporation d/b/a CenturyLink QC**
WC Docket No. 24-292, Comp. Pol. File No. 1949
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-292%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-292%22)))
Affected Service(s) – legacy voice service
Service Area(s) – Boulder, Colorado
Authorized Date(s) – on or after November 10, 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

DA 24-1065

Released: October 10, 2024

MEDIA BUREAU ANNOUNCES FILING WINDOW FOR NEW NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS FROM DECEMBER 4 THROUGH DECEMBER 11, 2024, AND SETS FORTH FILING PROCEDURES AND REQUIREMENTS

Limited Filing Freezes for all Full Power and Class A Television Stations to Commence December 3, 2024 Until Close of the Filing Window

This Public Notice provides an overview of the procedures, filing requirements, and comparative selection process that will apply to the upcoming filing window for applications for new noncommercial educational television (NCETV) station construction permits (NCETV Filing Window). **The window will open at 12:01 a.m. EST on December 4, 2024, and close at 6:00 p.m. EST on December 11, 2024.** The window is available for the locations and reserved noncommercial educational channels in the Table of TV Allotments (Table)¹ listed in Appendix A of this Public Notice.

In conjunction with the NCETV Filing Window, effective immediately upon release of this Public Notice, the Commission will not accept petitions to amend the Table to allot new reserved noncommercial educational channels to communities. **In addition, effective 12:01 a.m. EST on December 3, 2024, the Commission will not accept rulemaking petitions for full power television stations to change channel, and minor and major change applications for full power and Class A television stations. These freezes will continue in effect until the close of the NCETV Filing Window on December 11, 2024 at 6:00 p.m. EST (Application Deadline).**

I. ELECTRONIC LMS FILING INSTRUCTIONS

Applications for construction permits for new NCETV stations must be filed electronically on the FCC Form 2100, Schedule A-340 – Noncommercial Educational Reserved Channel Construction Permit Application (“Form 2100, Schedule A-340” or “Schedule A-340”) in the Commission’s Licensing and Management System (LMS).² Applicants must complete *all* sections of Schedule A-340, consistent with additional instructions discussed in this Public Notice. Paper filed applications will not be considered. There is no filing fee required for the application.³

Applications must be filed between **12:01 a.m. EST on December 4, 2024, and 6:00 p.m. EST on December 11, 2024.** The opening and closing of the NCETV Filing Window will be strictly enforced. Applications submitted before the opening of the NCETV Filing Window or after the 6:00 p.m. EST Application Deadline will be dismissed by public notice without further consideration. We therefore encourage applicants to file early in the window to ensure proper and timely submission and to contact

¹ 47 CFR § 73.622(j). Channels are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

² Instructions for filing construction permits for new NCETV stations are contained in Appendix B.

³ See 47 CFR § 1.1116(c) (exempting applicants, permittees, or licensees of NCE broadcast stations from filing fees).

Video Division, Media Bureau (Bureau) staff with any questions applicants may have about filing and qualification requirements.⁴ Applications filed during the window will not be made available to the public until after the close of the filing window.

Schedule A-340 is primarily certification-based, and requires applicants to document certain of their claims by submitting supporting information. **Each applicant should carefully read the Instructions to Schedule A-340, as well as this Public Notice, to ensure that each response contained in its application, which constitutes a certification or material representation, is correct. Each applicant bears full responsibility for submitting an accurate, complete, and timely application.**

LMS Help Center. Instructions on using the LMS electronic filing system are available on the Bureau's LMS Help Center page, which can be found at <https://www.fcc.gov/media/radio/lms-help-center>.

Form 2100, Schedule A-340 Instructions. Instructions on completing each section of Schedule A-340 (Instructions) that are specific to NCETV are available at: <https://www.fcc.gov/sites/default/files/lms-Form-2100-Schedule-A-340-NCE-construction-permit-application-instructions.pdf>. The Schedule A-340 Instructions must be read in conjunction with this Public Notice. Applicants should also refer to Commission policy statements and cases cited herein for guidance on basic NCETV eligibility requirements.

LMS Data Entry Login. Applicants can access the LMS applicant data entry home page at: <https://enterpriseefiling.fcc.gov/dataentry/login.html>, and login using the FCC Registration Number (FRN) associated with the applicant.⁵

For questions regarding basic filing requirements, or assistance logging into LMS or accessing Schedule A-340, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 a.m.-6:00 p.m. EST, or submit a request online at <https://www.fcc.gov/media/radio/lms-help-center>.

II. BASIC NCETV ELIGIBILITY CERTIFICATIONS

Nonprofit Educational Eligibility Qualifications. Applicants for NCETV stations must meet basic eligibility requirements set forth in section 73.621 of the Commission's rules (Rules)⁶ and established licensing policies that are not codified in its rules.⁷ In addition to this Public Notice,

⁴ Applicants that have successfully filed Schedule A-340 will receive a confirmation page that indicates "Application Submitted." The page will provide a summary of the information in the application and will also include the Application File Number (a 10 digit number starting with zeroes). If a confirmation page is not displayed, the application may not have been properly filed and applicants should contact the Commission for assistance.

⁵ To submit an application, an applicant must first have, or obtain, an FRN. An FRN is a 10-digit identifying number that is assigned to entities doing business with the Commission. Applicants who do not have an FRN must register for an FRN in the Commission's CORES (Commission Registration System) web page. Go to <https://www.fcc.gov/licensing-databases/commission-registration-system-fcc> and follow the links to register. For further assistance with CORES, applicants may view tutorial videos at <https://www.fcc.gov/licensing-databases/fcc-registration-system-cores/commission-registration-system-video-tutorials>, or call the FRN help desk from 8:00 a.m. to 6:00 p.m. ET at 1-877-480-3201. Prospective applicants can obtain an FRN immediately. We encourage them to do so.

⁶ See 47 CFR § 73.621.

⁷ See, e.g., *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania*, Report and Order, 17 FCC Rcd 14038, 14055, para. 46 and n.58 (2002) (considering request for waiver of uncoded rule requiring that newly de-reserved noncommercial educational television channels be made available for competing applications); *Amendment of Part 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, PR Docket No. 90-481, *Notice of Proposed Rulemaking*, 5 FCC Rcd 6401, 6402, para. 9 (1990) (describing uncoded policy of

(continued....)

applicants should refer to the Instructions to Schedule A-340 for guidance on basic eligibility requirements.

Section 73.621(a) of the Rules requires that a reserved channel be “licensed only to nonprofit educational organizations”⁸ Thus, Schedule A-340 requires that each applicant certify that it is either a nonprofit educational institution, a governmental entity other than a school, or a nonprofit educational organization. All nonprofit educational institutions, including public and private schools and colleges, should choose “nonprofit educational institution” under “Legal Certifications/Eligibility” on Schedule A-340. Government entities, including agencies and boards that do not operate a school, should choose “governmental entity other than school.” Nonprofit educational organizations that are neither schools nor government entities, such as private educational nonprofit corporations, should choose “nonprofit educational organization, other than described above.” **If the applicant cannot answer “Yes” to any subpart of this question, the applicant is not eligible to hold an NCETV station authorization.**

Television applicants other than governments and schools are eligible to hold NCETV authorizations only if the majority (more than 50 percent) of their governing board or leaders are representative of a broad cross section of community elements.⁹ Thus, if the applicant chooses “nonprofit educational organization” under the Eligibility certification, it is required to certify that persons in leadership positions, such as its officers, directors and members of its governing board, are broadly representative of the educational, cultural, and civic segments of the principal community to be served in order to establish their basic qualifications. Some examples of elements of the community are businesses; charities; civic, neighborhood and fraternal organizations; culture; education; environment; government; labor; military; minority and ethnic groups; organizations of and for the elderly, women, or youth; professions; and religion.¹⁰ For the governing board or leadership to be considered broadly representative, the applicant must have at least four different elements of the community among its leadership.¹¹ And, as the Commission has stated, “a local headquarters or residence must be a primary place of business or primary residence and not, for example, a Post office box, lawyer’s office, branch
(Continued from previous page) _____

allowing private land mobile radio service licenses to seek reinstatement within six months of expiration and noting that reinstatement policy is primarily based on application processing policy).

⁸ See 47 CFR § 73.621(a). NCETV stations are licensed *only* to nonprofit educational organizations, **and not individuals**. See 47 CFR § 73.621(a) and (b) (NCETV stations will be licensed only to nonprofit educational organizations based upon various showings depending on whether the applicant is a school, government entity, or a nonprofit educational organization that is neither a school nor a government entity).

⁹ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Report and Order, 15 FCC Rcd 7386, 7409, n.38 (2000) (*NCE Comparative Report and Order*) (subsequent citations omitted) (“We note that under basic eligibility requirements for NCE television applicants, there must be a majority (over 50%) of local board members in non-government entities. These local members must be broadly representative of elements of the community, as traditionally considered, (e.g. businesses, civic groups, professions, religious groups, schools, government”); *Memorandum Opinion and Second Order on Reconsideration*, 17 FCC Rcd 13132, *passim* (2002) (affirming importance of localism in NCE broadcasting) (subsequent citations omitted).

¹⁰ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5092-93, n.33 (2001) (*NCE MO&O*), citing *Ascertainment of Community Problems by Broadcast Applicants*, 41 Fed. Reg. 1372, 1384 (Jan. 7, 1976) (subsequent history omitted). Although the Commission no longer requires stations to conduct formal ascertainment, i.e., public outreach, to determine important local needs and issues, the elements articulated in a “community leader checklist” continue to be used to determine whether NCETV applicants are broadly representative.

¹¹ *La Dov Educational Outreach, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 12457, 12460, para. 9 (2008) (*La Dov*). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Notice of Proposed Rulemaking, 34 FCC Rcd 851, 855, n.33 (2019) (subsequent citations omitted).

office, or vacation home, which would not provide sufficient contact between the station's decision and policy makers and the area to be served."¹²

Applicants whose educational qualifications and proposed programming were previously approved by the Commission and intend to use the proposed station to advance a similar program may so certify by answering "Yes" to the second question in the "Eligibility" section on the Legal Certifications page of Schedule A-340 and indicate the file number of the most recent full power television NCETV application in which the Commission granted such approval.¹³ Applicants not previously approved or those applicants planning to advance a program dissimilar from one previously approved, i.e., answering "No," must establish their qualifications. The applicant must provide an exhibit showing that it has an educational objective and that the station will be used **primarily** for the advancement of an educational program that will further that objective in accordance with 47 CFR § 73.621. In considering these requirements, emphasis is placed on proposed station programs which are clearly educational in nature, i.e., actually involve teaching or instruction, whether for formal credit or not. However, it is not necessary that the proposed station's programming be exclusively educational in nature. Also, all programming on the station must be noncommercial in nature, with no advertisements, and must not offer support for or opposition to a candidate for political office. The applicant should carefully review its governing documents to confirm that it has an educational objective and that the station will be used for the advancement of an educational program. In addition, we remind applicants that, should they obtain a permit in this window, they cannot conduct third-party fundraising on their stations beyond a minimal amount permitted by our rules.¹⁴

Section 73.621(a) of the Rules further provides that an NCETV station will be licensed only upon a showing that the station will be used "**primarily** to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service."¹⁵ In order to comply with the requirement that an NCETV station "be used primarily to serve the educational needs of the community," more than half of the hours of programming aired on a reserved channel must primarily serve an educational, instructional or cultural purpose in the applicant's proposed community of license.¹⁶ The applicant must provide an attachment showing that the station will

¹² *La Dov* at 12459, para. 4, citing *NCE Comparative Report and Order*, 15 FCC Rcd at 7410, para. 54.

¹³ We note that the licensing and service requirements for noncommercial educational FM radio stations and NCETV stations differ. *Compare* 47 CFR §§ 73.503 and 73.621. While some Class A stations may operate on a noncommercial educational basis, they are not licensed as such.

¹⁴ In 2017, the Commission adopted rules that permitted NCE stations to conduct third-party fundraising as long as the fundraising programming did not exceed a one-percent cap of their annual total air time. *See Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, MB Docket No. 12-106, Report and Order, 32 FCC Rcd 3411 (2017). The one-percent cap equates to 88 hours annually or 1.7 hours weekly for stations on the air 24 hours a day. *Id.* at 3421, para. 18. For example, the Commission explained that "[t]hird-party fundraising programs may enhance the educational nature of NCE stations by educating the public about the social needs and charitable causes supported by non-profit organizations" such as a fundraising program for a breast cancer charity or a child poverty relief organization and "[s]ome of this financial support may directly benefit NCE stations' local communities." *Id.* at 3415, para. 6. *See also* 47 CFR § 73.621(e) and (f).

¹⁵ *Id.* at § 73.621(a) (emphasis added). While applicants for NCE FM stations must demonstrate that their programming will be "used for the advancement of" an educational program, only applicants for NCETV stations must show that "the proposed stations will be used **primarily** to serve the educational needs of the community." (emphasis added). *Compare* 47 CFR §§ 73.503(a) and 73.621(a).

¹⁶ *See Consent to the Assignment of License of Noncommercial Educational Station WQED(TV), Channel *16, Pittsburgh, Pennsylvania*, Memorandum Opinion and Order, 15 FCC Rcd 202, 224, para. 43 (1999), *vacated in part on other grounds*, 15 FCC Rcd 2534 (2000).

be used for the advancement of an educational program in compliance with this requirement for NCETV stations.¹⁷

Financial Qualifications. Schedule A-340 requires each applicant for a new NCETV station to certify that, at the time it files its application, the applicant has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate it for three months, without additional funds.¹⁸ Each applicant should be prepared to submit supporting documentation upon Bureau staff request.

Reasonable Site Assurance. At the time it files its application, an applicant must have reasonable assurance that the specified site will be available.¹⁹ Applicants filing this Schedule A-340 must certify that the site specified in the application is available for its intended use. If reasonable assurance is not based on the applicant's ownership of the proposed site or structure, the applicant must certify that it has obtained reasonable assurance of the site's availability by contacting the owner or person possessing control of the site or structure. The applicant must specify the name of the person contacted, the person's telephone number, and whether the contact is the tower owner, agent, or authorized representative.²⁰

III. COMPARATIVE CONSIDERATION OF APPLICATIONS

During the NCETV Filing Window, applications may be filed for the channels at the locations listed in Appendix A to this Public Notice. Applications filed for the same channel and location are considered mutually exclusive (MX).²¹ Each NCETV applicant must complete the "Point System Factors/Tie Breakers" section of Schedule A-340 by the NCETV Application Deadline. If MX applications proceed to a point system analysis, the Commission will review the point submissions to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.

Point System Selection Criteria. In cases of MX applications for new NCETV stations to operate on reserved channels, each application is reviewed pursuant to the Commission's comparative process. This procedure awards a maximum of seven merit points based on four criteria deemed to be

¹⁷ The requirement that NCETV licensees promote a primarily educational purpose may be satisfied by a variety of programs, including, but not limited to, "instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as *Sesame Street* that entertain as they teach." *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, MM Docket No. 95-31, 13 FCC Rcd 21167, 21168, para. 2, n.2 (1998) (subsequent citations omitted).

¹⁸ See Financial certification of FCC Form 2100, Schedule A-340.

¹⁹ See *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, para. 7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984). Although an applicant does not need to have a binding agreement or absolute assurance of a proposed site, a mere possibility that the site will be available is not sufficient. See *Wallace*, 49 FCC 2d at 1427, para. 6.

²⁰ See Form 2100, Schedule A-340 Instructions at page 12; see also *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, 12543, para. 59 (2019) (*2019 NCE LPFM Order*) (subsequent citations omitted) (directing the Bureau to update the Schedule 340 instructions to explain the requirement of obtaining reasonable site availability prior to the application filing and amend Schedule 340 to add a reasonable site assurance certification).

²¹ Unlike in the reserved educational FM service, because mutually exclusive NCETV applications are always for the same community and channel due to the use of the Table of TV Allotments, the Commission proceeds directly to a point system, without going through a section 307(b) analysis, 47 U.S.C. § 307(b), to determine which proposal best achieves our statutory goal of a fair distribution of services. See *NCE Comparative Report and Order*, 15 FCC Rcd at 7388, para. 3.

most relevant to predicting the applicant best qualified to provide the service for which this spectrum has been reserved.²² First, three points are awarded to applicants who have been local and established for at least two years. Second, two points are awarded for local diversity of ownership if there is no overlap of the principal community contour of the proposed station and any other station attributable to the applicant. Third, two points will be awarded for certain statewide networks providing programming to accredited schools, which cannot claim a credit for local diversity of ownership. Fourth, one point is awarded to an applicant if its proposed area and population is 10 percent greater than the next best proposal, or two points if 25 percent greater than the next best proposal. The tentative selectee is the applicant with the highest score.²³ An overview of the Commission's current comparative procedures and details on comparative information an applicant must submit are provided below.

Established Local Applicant. To qualify for the three points as an “established local applicant”²⁴ an applicant must certify that it has been local continuously for at least two years immediately prior to the Application Deadline.²⁵ To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75 percent of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.²⁶ A governmental unit is considered local within its jurisdictional boundaries.

If an applicant certifies that it is an “established local applicant,” it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.²⁷ Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75 percent local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.

Diversity of Ownership. To qualify for the two points for “diversity of ownership,” an applicant must certify that the principal community contours of its proposed NCETV station do not overlap with those of any other full-service or Class A television station²⁸ in which the applicant, or any party to the application, holds an attributable interest.²⁹

²² 47 CFR § 73.7003.

²³ See 47 CFR § 73.7003. We note that in 2019, the Commission amended its rules and procedures for filing NCE applications and selecting and licensing competing NCE application. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. See *2019 NCE LPFM Order*.

²⁴ 47 CFR § 73.7000 (Definitions of terms (as used in subpart K only)).

²⁵ 47 CFR § 73.7003(b)(1).

²⁶ A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. See *NCE Comparative Report and Order*, 15 FCC Red at 7410, para. 54.

²⁷ An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c).

²⁸ The NCETV applicant must count both commercial and noncommercial full power TV stations. Class A television stations are not designated as commercial or noncommercial.

²⁹ See 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. See 47 CFR § 73.7000.

To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCETV station, or a statement that the applicant holds no attributable interests in any nearby full service or Class A television stations.³⁰

Divestiture Pledges. We will permit an NCETV applicant with an overlapping attributable interest to qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.³¹ The divestiture pledge must be submitted with the application by the Application Deadline. The applicant, however, will not be required to complete the pledged action by the Application Deadline. Rather, if the permit is awarded based on points, the actual divestiture or resignation must be completed by the time the new NCETV station commences program test operations.³²

Statewide Network. The Commission awards two points for certain statewide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.³³ The statewide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a statewide network must submit supporting documentation as an application exhibit.³⁴

Technical Parameters. The Commission awards up to two points to an applicant that proposes the best technical proposal in an MX group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water). An applicant will receive one point if its proposed service area *and* population are 10 percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals, as measured by each proposed station's predicted noise-limited service contour (NLSC) applicable to its channel.³⁵ If the best technical proposal does not meet the 10 percent threshold, no applicant will be awarded points under this criterion.

Each applicant must include an application exhibit explaining how it calculated the technical parameters. The applicant should specify the year and blocks of census information used and the method used to determine area. Area must be measured in square kilometers and exclude significant areas of

³⁰ An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); *see also* 2019 NCE LPFM Order, 34 FCC Rcd at 12524-25, para. 12.

³¹ See 2019 NCE LPFM Order, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

³² *Id.* at 12526, para. 15.

³³ See 47 CFR § 73.7003(b)(3).

³⁴ See *Mississippi Authority for Educational Television*, Memorandum Opinion and Order, 18 FCC Rcd 22727, 22728, para. 3 (2003) (applicant claiming state-wide points submitted documents showing number of accredited schools served by its Learning Services Division and detailed telecourse information).

³⁵ See 47 CFR § 73.7003(b)(4). While the rule refers to applicants' coverage within the Grade B contour of the proposed television station, Grade B refers to an obsolete analog contour. A television station's NLSC is now defined in section 73.619 of the Rules, formerly 47 CFR § 73.625(b). See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (MB Mar. 4, 2024); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, 38 FCC Rcd 8706, 8727-28, para. 40 (Sept. 19, 2023).

water, e.g., ocean and lakes. Population should be measured using the 2020 Census Block Data available from the Census Bureau.³⁶

Tiebreakers. In the event MX applicants are tied with the highest number of points, the tied applicants will proceed to a tie-breaker round.³⁷ The first tie-breaker is the number of radio or television station authorizations attributable to each applicant.³⁸ The applicant must count all attributable full power commercial and NCE television, and Class A television, authorizations (licenses and construction permits).³⁹ The applicant with the fewest attributable authorizations prevails.⁴⁰

If the tie is not broken by this first factor, the Commission will apply a second tie-breaker: the number of pending television station applications attributable to each applicant.⁴¹ When reporting pending applications, applicants must include new and major change television applications, including the subject application and all other applications filed in this window by the Application Deadline. Applicants should *not* include any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service at the time of filing.⁴²

Timely Documentation of Comparative Qualifications. As noted, Schedule A-340 is certification-based, but requires applicants to document certain claims by submitting supporting information.⁴³ We caution applicants that the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits. Applicants, therefore, should review their supporting documentation thoroughly before filing.

Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited.⁴⁴ For example, every applicant claiming points

³⁶ Applicants should be aware that the Commission's *TVStudy* software will be used with its 2020 Census data to evaluate the population coverage of applications, and applicants are thus strongly encouraged to use *TVStudy* in determining their area and population counts. See *Media Bureau Announces the Incorporation of 2020 U.S. Census Population Data into the Commission's TVStudy Software and Requirement to Utilize Such Data Effective August 1, 2024*, Public Notice, DA 24-497 (rel. May 28, 2024). An updated version of the *TVStudy* software (Version 2.3.0) was released May 28, 2024. See *Office of Engineering and Technology Announces Release of Version 2.3.0 of TVStudy*, Public Notice, DA 24-499 (rel. May 28, 2024).

³⁷ See 47 CFR § 73.7003(c).

³⁸ 47 CFR § 73.7003(c)(1).

³⁹ See *NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85.

⁴⁰ If the tie cannot be broken and the applicants cannot reach a voluntary settlement, the Commission will consider the tied applicants for mandatory timesharing on an equal-time basis.

⁴¹ 47 CFR § 73.7003(c)(2). Television applicants count UHF, VHF, and Class A stations. Our rules do not require television stations to count low power television or TV translator stations when reporting attributable commercial or noncommercial television stations for purposes of applying for a reserved channel station. See *NCE MO&O*, 16 FCC Rcd at 5103, para. 85.

⁴² *Id.* at 5100, para. 76. The Commission's rules provide for a third and final tie-breaker criterion – prior NCE applications – if a tie remains after the second tie-breaker. See 47 CFR § 73.7003(c)(3). Because this criterion is premised upon an applicant filing in a previous filing window, and this is the first NCETV filing window the Commission has opened, the third tie-breaker criterion is inapplicable for purposes of applying for a new NCETV construction permit.

⁴³ See *NCE Comparative Report and Order*, 15 FCC Rcd at 7423, para. 89.

⁴⁴ The Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance could lead to abuse of Commission processes, applicant gamesmanship, and unfair advantage. See, e.g., *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to* (continued....)

for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station. With respect to the diversity certification, the preferred supporting documentation is a map showing no overlap, or a statement that none of the parties to the application holds an attributable interest in any other station. While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot be found to have made a valid certification and will not receive the claimed points.⁴⁵ The Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline.

“Snap Shot” Date for Establishing Points and Comparing Applications. The NCETV applicant's qualifications for points will be initially determined “as of the closing of the filing window” – i.e., the Application Deadline.⁴⁶ For example, NCE organizations will be considered “established” if they have operated as local entities since December 11, 2022 – i.e., for at least two years prior to the Application Deadline. These “snap shot” applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.⁴⁷

Any changes made after the Application Deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, the Commission will take into account any amendments that adversely affect an applicant's point total and comparative position. The Commission will *not* consider any amendments, filed after the Application Deadline, which improve an applicant's comparative position.⁴⁸ For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the Application Deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to attempt to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.⁴⁹

(Continued from previous page)

Construct New Noncommercial Educational FM Stations, Memorandum Opinion and Order, 30 FCC Rcd 5161, 5170, paras. 26-27 (2015); *see also Comparative Consideration of 33 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 26 FCC Rcd 9058, 9063 (2011) (comparative qualifications claims not supported with documentation on file by close of window cannot be credited); *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1694 (2010) (rejecting documentation filed after close of window as prohibited attempt to enhance comparative qualifications).

⁴⁵ *See, e.g., Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017, para. 11 (2010) (“applicant submitting no timely documentation at all cannot be found to have made a valid certification”).

⁴⁶ *See* 47 CFR § 73.7003(e).

⁴⁷ *See, e.g., NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; *see also id.* at 5083, para. 26 (“Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.”).

⁴⁸ *See* 47 CFR § 73.7003(e).

⁴⁹ Another example of this principle is in the first tie-breaker criterion, which selects the applicant with the fewest number of broadcast authorizations at the time of filing. An applicant cannot enhance its position by selling one of its existing stations, but can diminish its position by acquiring an additional station.

Acceptability of Applications. Following the Application Deadline, the Bureau will review all applications for compliance with the relevant technical and legal rules.⁵⁰ If an application is defective (i.e., it does not comply with the Rules or meet the criteria specified in this Public Notice), we will issue a deficiency letter to the applicant providing the reason for deficiency and giving the applicant thirty days to amend its application to cure the deficiency. Failure to correct all deficiencies within 30 days of the date of the letter will result in dismissal of the application.

Amendments to Applications. Following the Application Deadline, each applicant must continue to maintain the accuracy and completeness of the information in its application, and notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significance to the application.⁵¹ For example, an applicant will be required, pursuant to section 1.65 of the Rules, to update its number of authorizations (Tiebreaker section) if/when one of its pending applications is granted.⁵²

Local Public Notice. Applicants filing Schedule A-340 must provide the public with notice to inform the community about the proposal.⁵³ Applicants for construction permits for a new NCETV station must give online notice, either on the station website or a website affiliated with the station, its licensee, or its parent entity, or otherwise by posting notice in the form prescribed in the Rules⁵⁴ on a publicly accessible, locally targeted website, for 30 consecutive days following acceptance of the application for filing.⁵⁵

IV. FILING FREEZES

In order to promote transparency and predictability for NCETV Filing Window applicants, we will institute limited and temporary filing freezes on certain applications and petitions. First, effective immediately upon release of this Public Notice, petitions to amend the Table to allot new reserved noncommercial educational channels to communities will be frozen until close of the NCETV Filing Window. Second, effective 12:01 a.m. EST on December 3, 2024, we will freeze channel change rulemaking petitions for all full power television stations, and minor and major change applications for full power and Class A television stations. These freezes apply to all channels in the TV band (channels 2-36), on a nationwide basis. The freezes will remain in effect until close of the NCETV Filing Window.⁵⁶ These freezes have been designed to provide sufficient time for applicants and consulting engineers to verify the availability of spectrum and perfect applications prior to filing, while minimizing expenditures on facility proposals that otherwise could be blocked by filings immediately prior to the opening of the window. Any application or petition filed during this freeze will be dismissed, without prejudice, absent a waiver of this temporary freeze. Applications and petitions filed after the freeze will be processed in accordance with Commission rules and processing standards.

Additional Information. For additional information on the filing window, procedures, and filing freezes, please contact Bureau staff by e-mail as follows: Joyce Bernstein (legal) at Joyce.Bernstein@fcc.gov; Emily Harrison (legal) at Emily.Harrison@fcc.gov; Kevin Harding (technical)

⁵⁰ See, e.g., 47 CFR §§ 73.618, 73.622(j), 73.623(a), and 73.1030.

⁵¹ See 47 CFR § 1.65.

⁵² See, e.g., *NCE MO&O*, 16 FCC Rcd at 5083, para. 25.

⁵³ 47 CFR § 73.3580(c)(1).

⁵⁴ See 47 CFR § 73.3580(b)(2).

⁵⁵ *Id.*

⁵⁶ The Bureau will consider waivers of this freeze on a case by case basis. These freezes do not include low power television or TV translator stations. However, as secondary stations, we remind LPTV/TV translators that they are secondary to any applications filed during the NCETV Filing Window and may be displaced by such filings.

at Kevin.Harding@fcc.gov; or Mark Colombo (technical) at Mark.Colombo@fcc.gov. Applicants may also contact Bureau staff by phone at: (202) 418-1600. Direct press inquiries to Nancy Murphy at (202) 418-1043 or Nancy.Murphy@fcc.gov.⁵⁷

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⁵⁷ The actions in the Public Notice are taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Rules. 47 CFR §§ 0.61 and 0.283.

APPENDIX A

CONSTRUCTION PERMITS IN NCETV FILING WINDOW

<u>State</u>	<u>Community</u>	<u>Channel Number</u>
AL	Vernon	*4
AK	Anchorage	*26
AK	Bethel	*3
CA	Colusa	*2
CA	Fort Bragg	*4
CA	Tulare	*3
ID	Filer	*18
IA	Ames	*21
NM	Alamogordo	*4
OR	Jacksonville	*4
TX	Waco	*20
VA	Waynesboro	*12

APPENDIX B**INSTRUCTIONS FOR ACCESSING AND FILING IN LMS****General Log-in Instructions**

1. Access the LMS data entry home page at: <https://enterpriseefiling.fcc.gov/dataentry/login.html>.
2. Log-in using the FRN associated with the station.

Application For Construction Permits for New NCETV Stations

1. Click on “Authorizations” tab on the left top of the page.
2. Click on the file number of the current license for the station.
3. Click on “File an Application” button.
4. Select “Form 2100, Schedule A-340 – Noncommercial Educational Reserved Channel Construction Permit Application” for NCETV stations from the drop-down menu.
5. Complete the application and click “Submit.”

For questions regarding basic filing requirements, or assistance logging into LMS or accessing Schedule A-340, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 a.m.-6:00 p.m. EST, or submit a request online at <https://www.fcc.gov/media/radio/lms-help-center>.



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
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TTY: 1-888-835-5322

DA 24-1066
October 11, 2024

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 47 (PUERTO RICO) REGIONAL PLANNING COMMITTEES
TO HOLD 700 MHZ AND 800 MHZ MEETINGS**

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

The Region 47 (Puerto Rico)¹ Public Safety 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Tuesday, November 12, 2024. Beginning at 9:00 am, the 700 MHz Public Safety RPC will convene at the Salón de prensa, Coliseo Rubén Rodríguez, Road # 2, Bayamón, PR.

The agenda for the 700 MHz meeting includes:

- Welcome and introductions
- 700 MHz broadband update
- Open discussion for any Plan changes
 - 700 MHz Interoperability
 - State License
 - CAPRAD
 - Vote on proposed Plan modifications
- Open Topics
- Adjourn

Immediately following the 700 MHz RPC meeting, the 800 MHz NPSPAC meeting will begin.

The agenda for the 800 MHz meeting includes:

- Welcome and introductions
- 800 MHz P25 system deployment updates
- Open discussion for any Plan changes
 - Channel loading
 - CAPRAD
 - Frequency give back
 - Plan modification voting
 - Discussion of other possible changes to the 800 MHz NPSPAC Plan
- Other Topics
- Adjourn

¹ The Region 47 (Puerto Rico) public safety regional planning area includes the entire Commonwealth of Puerto Rico.

Both Region 47 Public Safety RPC meetings are open to the public. All eligible public safety providers in Region 47 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 47 should plan to participate in the meeting.

For further information, please contact:

Ferdinand Cedeno, P.E.
Chair, Region 47 700 MHz and 800 MHz Public Safety RPCs
P.O. Box 3858
Bayamón Gardens Station
Bayamón, PR 00958
Ferdinand.cedeno@gmail.com
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PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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News media information: 202-418-0500
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DA No. 24-1067

Report No. SAT-01862

Friday, October 11, 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-20240418-00082 53032 BlackSky Global LLC
Special Temporary Authority

Effective Date:

On October 11, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to BlackSky Global LLC, for a period of up to thirty days, to operate the BlackSky Global 30 satellite at altitudes ranging between 340 km and 385 km.

SAT-STA-20241001-00212 52939 Intelsat License LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/08/2024

Nature of Service: Fixed Satellite Service

On October 8, 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 11.1-11.9 GHz (Earth-to-space) and 14.2-14.3 GHz (space-to-Earth) frequency bands with a different beam coverage at the 60.0° E.L. orbital location.

SAT-STA-20241007-00215 5 Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/04/2024

On October 4, 2024, the Satellite Licensing Division granted, with conditions, special temporary authority to Space Exploration Holdings, LLC, for a period of 15 days, to operate the Starlink Gen2 space station with supplemental coverage from space-capable earth stations at the areas of Florida, Georgia, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia, affected by Hurricane Helene.

SAT-STA-20241007-00216 6 Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/07/2024

On October 7, 2024, the Satellite Licensing Division granted, with conditions, special temporary authority to Space Exploration Holdings, LLC, for a period of 15 days, to operate the Starlink Gen2 space stations with supplemental coverage from space-capable earth stations in the areas of Florida affected by Hurricane Milton.

INFORMATIVE

SAT-LOA-20230504-00103

S3173

Muon Space Inc.

The Satellite Programs and Policy Division has determined that Muon Space, Inc. has met the launch and begin operations milestone associated with its grant of authority to construct, deploy and operate two non-geostationary orbit space stations, MuSat-2 and MuSat-3 (Call Sign S3173), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d).

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1068

Released: October 11, 2024

EFFECTIVE DATE FOR TELEPHONE CONSUMER PROTECTION ACT RULES ON REVOKING CONSENT FOR UNWANTED ROBOCALLS AND ROBOTEXTS SET FOR APRIL 11, 2025

CG Docket No. 02-278

On February 15, 2024, the Commission adopted the *TCPA Consent Order* in the above-captioned proceeding.¹ In that rulemaking, the Commission adopted rules making it simpler for consumers to revoke consent to receive unwanted robocalls and robotexts.² Callers and texters must honor these opt-out requests in a timely manner.³

The *TCPA Consent Order* established that these rules would become effective six months following publication in the Federal Register that the Office of Management and Budget (OMB) has completed its review of the modified information collection requirements under the Paperwork Reduction Act of 1995.⁴ OMB approved these modified information collection requirements on September 26, 2024.⁵

On October 11, 2024, the Commission announced in the Federal Register that compliance with the amendments and new rules set forth in the *TCPA Consent Order* as contained in 47 CFR §§ 64.1200(a)(9)(i)(F), (10), (11) and (d)(3) is required as of April 11, 2025.⁶

For further information, contact Richard D. Smith, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (717) 338-2797 or Richard.Smith@FCC.gov.

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-24 (rel. Feb. 16, 2024) (*TCPA Consent Order*).

² *Id.* at paras. 10-32.

³ *Id.*

⁴ See *id.* at para. 34.

⁵ See Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520); Notice of Office of Management and Budget Action, OMB Control No. 3060-0519 (approved Sept. 26, 2024), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202408-3060-009.

⁶ See Federal Communications Commission, *Strengthening the Ability of Consumers to Stop Robocalls*, 89 Fed. Reg. 82518 (Oct. 11, 2024).

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

In the Matter of	)	
	)	
Modification of December 19, 2023, Order	)	ET Docket No. 22-382
Continental Automotive Systems, Inc. and	)	
Continental Automotive GmbH Order for	)	
Waiver of Section 15.231(e) of the	)	
Commission's Rules	)	

ORDER

Adopted: October 11, 2024

Released: October 11, 2024

By the Chief, Office of Engineering and Technology:

1. By this Order, we find that there is good cause to modify our December 19, 2023, Order (Waiver Order) that granted Continental Automotive GmbH (Continental) a limited waiver of the Commission's part 15 rules. Specifically, the Waiver Order waived Section 15.231(e) of the Commission's rules to permit the marketing and operation of Continental's TPMS sensor that is designed to use the 315 MHz and 433MHz bands to monitor the pressure inside of a vehicle's tires and warn drivers of low-pressure conditions, potentially avoiding a blowout or other tire malfunction.¹ The Waiver Order included multiple conditions to limit the potential for harmful interference from Continental's devices to incumbent users while still allowing for its deployment in vehicular applications.² In this current Order, we modify two waiver conditions and include a new waiver condition that requires Continental's device to minimize the amount of time that the device needs to complete the drive cycle calibration and permits shorter silent periods between transmissions for shorter drive cycles that occur prior to the full calibration of Continental's TPMS sensor.

2. On May 15, 2024, Continental requested we clarify conditions in the Waiver Order that permit the TPMS sensor to operate with more frequent transmissions during the initial calibration of the TPMS sensor.³ Continental makes this request pursuant to Section 1.41 of the Commission's rules.⁴ Continental states that such clarifications are fully consistent with the Continental Waiver Request and

¹ *Continental Automotive Systems, Inc. and Continental Automotive GmbH Request for Waiver of Section 15.231(e) of the Commission's Rules*, Order, DA 23-1182 (OET Dec. 19, 2023) (Waiver Order).

² Waiver Order at 6. The conditions included limitations to when and for how long the TPMS would be allowed to operate in a manner that does not strictly conform to the requirements of Section 15.231(e). Specifically, there conditions permit the TPMS to operate with a minimum silent period between transmissions of 6 seconds during the first 144 seconds the vehicle is in motion for the initial five drive cycles that exceed 144 seconds after installation or reset of the TPMS system. Individual transmission during the first five drive cycles after installation or reset of the device were limited to 200 milliseconds.

³ Letter from Alan G. Fishel, Counsel to Continental Automotive Systems, Inc. and Continental Automotive GmbH, ArentFox Schiff LLP, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 22-382, at 1 (filed May. 15, 2024) (Continental May 15, 2024 *Ex Parte*); *see also* Continental Waiver Order DA 23-1182 at 6. Para 13.

⁴ Continental May 15, 2024 *Ex parte*.

that the requested modifying Order will result in no substantive changes to the facts and issues already considered and approved by the Office of Engineering and Technology, and, as such, are in the public interest.⁵ We concur and detail our reasoning below.

3. Continental requests three modifications to paragraph 13 of the Waiver Order.⁶ First, Continental seeks clarification regarding the second waiver condition that the product to which the Commission refers to is the TPMS sensor.⁷ The existing waiver condition omits the term “sensor”.⁸ Second, the original Waiver Request included language that explicitly sought a carve out for the operating condition of the device where-by “in the unlikely event that before all five instances referenced above [i.e. in the first proposed waiver condition] occur there is a very short driving trip in which the vehicle is in motion for less than 144 seconds, the transmissions would occur every 6 seconds while the vehicle is in motion during that very short trip as well.”⁹ Continental requests that we include an additional waiver condition that specifically accounts for this rare condition. Third, in the Waiver Request, Continental states “the combined length of the RF emissions (not counting the intermittent non-emission pauses) for a single transmission will be less than 200 milliseconds.”¹⁰ However, the Waiver Order uses the language, “not including the intermittent non-transmission pauses.”¹¹ Continental therefore requests clarification that the operation and transmission sequence permitted in the waiver request are what was the intention of the third condition of the Waiver Order.¹² Specifically, Continental requests that the existing condition 3 should be renumbered as condition 4 and that the first two clauses of this condition be replaced with the following: “The combined length of the RF emissions for an individual transmission period (not counting the intermittent non-emission pauses), during the first five drive cycles after the installation or resetting of the device shall not exceed 200 milliseconds.”¹³

4. We find the modifications requested by Continental will provide additional clarity to the existing Waiver Order. Moreover, we agree with Continental that the revised waiver conditions are consistent with the existing record of the docket – including information Continental previously included in its original request and was subject to public comment – and thus these revisions fall well within the scope of the facts and issues that we had previously considered and approved.

5. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.¹⁴ Good cause, in turn, may be found and a waiver granted “where particular facts would make strict compliance inconsistent with the public interest.”¹⁵ To

⁵ Letter from Alan G. Fishel, Counsel to Continental Automotive Systems, Inc. and Continental Automotive GmbH, ArentFox Schiff LLP, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 22-382, at 1 (filed May 15, 2024) (Continental May 15, 2024 *Ex Parte*).

⁶ Continental May 15, 2024 *Ex parte*.

⁷ Continental May 15, 2024 *Ex parte*.

⁸ Continental May 15, 2024 *Ex Parte* at 2. Waiver Request at 9.

⁹ *Request by Continental Automotive systems, Inc. and Continental Automotive GmbH for Waiver of Section 15.231(e) of the Commission's Rules* (Continental Waiver Request) (filed Aug. 30, 2022), at 9. *See also*, foot note 10. Continental filed its request in INBOX-PART 15 in the Commission's Electronic Comment Filing System.

¹⁰ Continental Waiver Request at 7.

¹¹ Waiver Order at 6.

¹² Continental May 15, 2024 *Ex Parte*.

¹³ Continental May 15, 2024 *Ex Parte* at 2.

¹⁴ 47 CFR § 1.3. *See also* *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁵ *Northeast Cellular*, 897 F.2d at 1166; *see also* *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.¹⁶

6. We find that clarifying conditions 2 and 3 and including a new condition to the Waiver Order will continue to meet the waiver standards that we have previously determined. That is, these slight clarifications will not undermine the purpose of the rules relating to periodic operation of intentional radiators within the 40.66-40.77 MHz band and in spectrum bands above 70 MHz, i.e., to prevent harmful interference to authorized services.¹⁷ As previously discussed in the Waiver Order, the likelihood of harmful interference from the TPMS device is extremely low due to a number of factors, including: 1) the time of emissions transmission for the first 144 seconds of operations would be similar to a fully compliant device, 2) the low power level limited by the small cell battery is compliant with our power rules, 3) the emissions are shielded by the tire and the vehicle body and frame, and 4) several conditions that limit how the units may be operated.¹⁸ We agree with Continental that clarifying the conditions of the waiver and explicitly providing for an intermittent drive cycle carve out for a rare event in which the full calibration of the TPMS system is not met within the initial five drive cycles is necessary, because there may be an intermittent drive cycle that is shorter than the 144 seconds needed for the calibration period.¹⁹ We further clarify condition number 3, specifying that the non-emission pauses during a train of emissions, which span the combined length of RF transmissions for a single transmission cycle, align with the original intention of the Waiver Order. This clarification is presented in the conditions below.²⁰ Taking into consideration the protection afforded by the existing conditions, which are limiting the emissions period of the TPMS sensor to match the emissions period of a device that is fully compliant with our rules, the combined length of the RF emissions for a single transmission period is limited to 200 milliseconds, and a transmission duration during the first 144 seconds of operation that would result in the same 4.65-second transmissions as a device that is fully compliant with our part 15 rules,²¹ we conclude that clarifying the intent of the existing conditions and adding an additional condition that explicitly includes a carve out in the rare chance of an intermittent TPMS sensor cycle here will not significantly increase the risk of harmful interference.

7. We also find that modifying the conditions is consistent with our prior determination that this waiver is in the public interest. The Waiver Order noted the significant public interest benefit the TPMS device's promise in the deployment of enhanced tire pressure monitoring systems that comprise a critical and important safety system on vehicles.²² The Waiver Order also stated that there was a public interest benefit for an innovative sensor that significantly decreased the time for the "learning and localization process," which in turn will warn drivers sooner of under inflated tires.²³ Providing drivers

¹⁶ See, e.g., *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

¹⁷ See 47 C.F.R. § 15.231(e).

¹⁸ Waiver Order at 4-5.

¹⁹ See Continental May 15, 2024 *Ex parte* at 2.

²⁰ See *infra* at para 8.

²¹ Waiver Order at 4 fn. 27. The Waiver Order provides calculations comparing a fully compliant device to that of the Continental TPMS sensor. These calculations demonstrate that a fully compliant device would have a total transmission on time of 4.64 seconds and the TPMS sensor would have a total transmission on time of 4.645 seconds when observed over a time period of 144 seconds. Thus, the TPMS sensor would be no more interfering to a potential victim receiver than a device that was fully compliant with Part 15 rules.

²² Waiver Order at 5.

²³ Waiver Order at 5.

with this increased speed of detection of under inflated tires has the public safety benefit of reducing the number of vehicles that experience catastrophic tire failure and the economic benefits of enabling drivers to operate their vehicles with properly inflated tires and in turn lead to more efficient use of fuel.²⁴ Allowing the TPMS sensor the opportunity to fully calibrate its electronics even in the rare instance where there is an initial-drive cycle that is shorter than 144 seconds prior to the required five full calibrations cycles, as described in the Waiver Order, will ensure that the TPMS certification is not unnecessarily penalized for drive cycle duration that is under the control of a vehicles driver, which is out of the control of the manufacturer during the certification process. It will also enable Continental to certify and market its TPMS sensor more promptly by removing certain ambiguities in the previous conditions that a certification body may have reservations toward, and thus bring the benefits of this technology to the public sooner.

8. We therefore modify the Waiver Order to clarify and correct conditions 2 and 3; re-number previous condition number 3 as condition number 4; and include a new condition number 3. The modifications to the conditions in the Waiver Order are to read as follows:

“

- 2) The Continental TPMS device shall operate with a minimum silent period between transmissions of 6 seconds during the first 144 seconds the vehicle is in motion for the initial five drive cycles that exceed 144 seconds after installation or reset of the Tire Pressure Monitoring System sensor.
- 3) In the rare event that the full calibration is not met within the initial five drive cycles (because there may be an intermittent drive cycle that is shorter than 144 seconds), the TPMS sensor may still operate with a minimum silent period between transmissions of 6 seconds during the shorter drive cycles until such a time that the five full calibration cycles are met.
- 4) The combined length of the RF emissions for an individual transmission period (not counting the intermittent non-emission pauses), during the first five drive cycles after the installation or resetting of the device, shall not exceed 200 milliseconds. ”

9. Accordingly, pursuant to authority delegated in Sections 0.31 and 0.241 of the Commission's rules, 47 CFR §§ 0.31, 0.241, and Section 1.3 of the Commission's rules, 47 CFR § 1.3, IT IS ORDERED that Continental's May 15, 2024 request to clarify the scope of condition 2 and 3 from OET's December 19, 2023, Waiver Order IS GRANTED consistent with the terms of this Order. This action is taken pursuant to Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), and 303(r). This action is effective upon release of this Order.

10. IT IS FURTHER ORDERED that, if no applications for review are timely filed, this proceeding SHALL BE TERMINATED, and the docket CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Ira Keltz
Acting Chief
Office of Engineering and Technology

²⁴ Waiver Order at 5; *see also* Continental Request at 9.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1070

Released: October 11, 2024

WTB AND PSHSB EXTEND FILING AND REGULATORY DEADLINES IN AREAS AFFECTED BY HURRICANES HELENE AND MILTON

By this Public Notice, the Wireless Telecommunications Bureau (WTB) and Public Safety and Homeland Security Bureau (PSHSB) apply our extended filing and regulatory deadlines¹ to the additional affected counties which are experiencing damage due to both Hurricanes Helene and Milton. Therefore, pursuant to our authority to waive rules for good cause² and to alleviate any additional burden that may be caused by our filing requirements and regulatory deadlines, we hereby extend certain deadlines occurring through November 28, 2024 until November 29, 2024 for affected licensees and applicants in the affected areas as described in the appendix.

For the purposes of the relief we grant today, we define “affected areas” as the Florida counties designated by the Federal Communications Commission’s Disaster Information Reporting System (DIRS) at any time from October 7, 2024 through October 11, 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. A complete list of all extended filing and regulatory deadlines due to Hurricanes Helene and Milton can be found in the appendix to this Public Notice.

(1) For affected licensees and applicants, we extend until November 29, 2024, any deadlines currently set within the period from October 28, 2024, to November 28, 2024, inclusive, with respect to Wireless Radio Service⁴ applications, notifications, and reports pursuant to parts 1 (subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission’s rules, including, but not limited to, filings regarding certain minor⁵ license modifications, license renewals, and notifications of construction. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines

¹ *WTB and PSHSB Extend Filing and Regulatory Deadlines in Areas Additional Affected by Hurricane Helene*, Public Notice, DA 24-1028 (WTB/PSHSB Oct. 2, 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 Milton in Florida*, Public Notice, DA 24-1050 (PSHSB Oct. 7, 2024).

⁴ *Wireless Radio Services*. All radio services authorized in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of the Commission’s rules, whether commercial, private, or public safety in nature.

⁵ See 47 CFR § 1.947(b). We waive the requirement to notify the Commission within 30 days of making a minor modification.

could not be met within the time otherwise provided in the Commission's rules because of Hurricane Helene and/or Hurricane Milton,⁶ pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.⁷

(2) For affected licensees and applicants, we extend until November 29, 2024 all construction deadlines and other regulatory deadlines currently set within the period from October 28, 2024, to November 29, 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 and/or Milton will be considered "emergency filings" pursuant to section 1.915(b) of the Commission's rules¹⁰ and will be processed as expeditiously as possible. Affected licensees and applicants must include a certification that the STA or waiver request is in response to Hurricane Helene and/or Hurricane Milton. 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.
 - 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.

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).

- 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 and/or Hurricane Milton.

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 and/or Hurricane Milton.

By the Chief, Wireless Telecommunications Bureau and the Chief, Public Safety and Homeland Security Bureau.

-FCC-

¹¹ *Id.* §§ 22.307, 90.407, 101.205.

¹² *Id.* § 17.4(c)(1)(iv), (c)(1)(vii).

¹³ See *National Environmental Policy Act Compliance for Proposed Tower Registrations, Effects of Communications Towers on Migratory Birds*, WT Docket Nos. 08-61, 03-187, Order on Remand, 26 FCC Rcd 16700, 16717, para. 43 n.117 (2011).

APPENDIX

The following counties have extended filing and regulatory deadlines occurring between **September 23, 2024 to November 28, 2024 until November 29, 2024**:

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.

The following counties have extended filing and regulatory deadlines occurring between **September 23, 2024 to October 28, 2024 until October 29, 2024** :

Florida: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, St. Johns, 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, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Lee, Lexington, Laurens, 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.



DA 24-1071
Released: October 12, 2024

THE FEDERAL COMMUNICATIONS COMMISSION DEACTIVATES THE DISASTER INFORMATION REPORTING SYSTEM (DIRS) FOR CERTAIN COUNTIES IN NORTH CAROLINA FOR COMMUNICATIONS IMPACTED BY HURRICANE HELENE

The Federal Communications Commission (FCC), at the request of the State of North 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 North Carolina impacted by Hurricane Helene:¹

North Carolina: Ashe, Avery, Burke, Caldwell, Cherokee, Clay, Graham, Jackson, Macon, Swain, Transylvania, and Watauga.

Communications providers do not need to provide any additional reporting in DIRS for these areas in North 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 North Carolina no longer covered by DIRS reporting for Hurricane Helene.²

DIRS remains activated in the following counties:

North Carolina: Buncombe, Haywood, Henderson, Madison, McDowell, Mitchell, Polk, Rutherford, and Yancey.

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***

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).

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 Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-6322

DA 24-1072

Released: October 14, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM AND THE MANDATORY DISASTER RESPONSE INITIATIVE FOR HURRICANE MILTON IN FLORIDA

The Federal Communications Commission (FCC), at the request of the State of Florida and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, announces the deactivation of its Disaster Information Reporting System (DIRS) and Mandatory Disaster Response Initiative (MDRI) for Hurricane Milton.¹ During DIRS activations, communications providers that provide service to specified areas submit and update information through DIRS regarding, *inter alia*, the status of their communications equipment, restoration efforts, and power.² During MDRI activations, the Commission requires facilities-based mobile wireless providers that offer service to the disaster-affected area to perform the following functions: (1) provide for reasonable roaming under disaster arrangements when technically feasible; (2) activate mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.³

Effective today, no further reports to DIRS are requested in response to Hurricane Milton within the State of Florida and facilities-based mobile wireless providers are no longer required to perform MDRI-related functions for the State of Florida in response to Hurricane Milton.⁴ The Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules, which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for any new network outages for the area covered by DIRS reporting for Hurricane Milton.⁵

We hereby require facilities-based mobile wireless providers offering service to the disaster-affected areas to submit a report to the Commission detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions within 60 days of the Bureau's

¹ DIRS is a mandatory, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, use to report communications infrastructure status and situational awareness information during times of crisis. See 47 CFR § 4.18 (DIRS); 47 CFR § 4.17 (MDRI).

² See 47 CFR § 4.18(a) (requiring cable communications, wireline, wireless, and interconnected VoIP providers to report their infrastructure status in DIRS); FCC, Disaster Information Reporting System (DIRS), <https://www.fcc.gov/dirs> (last visited Sep. 13, 2024).

³ See 47 CFR § 4.17(a)(3)(i)-(v).

⁴ The MDRI had been activated in response to Hurricane Milton in the State of Florida. See *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*, Public Notice, DA 24-1050 (rel. Oct. 7, 2024).

⁵ 47 CFR § 4.9(a) (cable); 47 CFR § 4.9(e) (wireless); 47 CFR § 4.9(f) (wireline); 47 CFR § 4.9(g) (interconnected VoIP); see also 47 CFR § 4.18(b) (suspending NORS requirements for cable, wireless, wireline, and interconnection VoIP providers required to report in DIRS pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS).

issuance of this Public Notice (i.e., by December 13, 2024).⁶ For the purpose of this MDRI activation, disaster-affected areas include the following Florida counties: 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. As the Commission has stated, relevant details for MDRI after-action reports “may include whether a provider roamed, the other providers it roamed with, the time period involved and, if relevant, the time it took for a provider to perform a health assessment and activate roaming.”⁷ Reports must be submitted via email to MDRI@fcc.gov. Receipt of these reports will allow the Commission to gauge the effectiveness of the MDRI during this activation.

The FCC will continue to monitor the status of communications services and work with providers and government partners, as needed, to support remaining restoration efforts.

If there are major changes, whether improvements or setbacks, to the status of communications in the affected area, the FCC asks communications providers to supply that information directly to FCC personnel at the contact information below as these events occur. The FCC continues to be available to address emergency communications needs related to Hurricane Milton 24 hours per day, seven days per week through our 24-hour operations center, which can be reached at 202-418-1122 or fccops@fcc.gov. This combination of measures will provide the Commission with the necessary situational awareness as service restoration continues.

The FCC appreciates the cooperation of all the communications providers that submitted data to DIRS and that participated in the MDRI in the aftermath of Hurricane Milton. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts and participation in the MDRI ensures effective coordination and planning to maintain and restore network connectivity. The FCC published its final daily communications status report for Hurricane Milton today, October 14, 2024.

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, (215) 847-8094, 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 Milton, please go to www.fcc.gov/Milton.

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⁶ See 47 CFR § 4.17(c); *Resilient Networks, et al.*, PS Docket Nos. 21-346, 15-80, and ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 8059, 8070-71, para. 32 (2022) (*Resilient Networks R&O and FNPRM*).

⁷ *Resilient Networks R&O and FNPRM*, 37 FCC Rcd at 8077, para. 51.



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 24-1073
Released: October 15, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 24-251

The Wireline Competition Bureau (Bureau) grants the application listed in this Public Notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 CFR § 63.03. The Bureau determined that a grant of this application serves the public interest.¹ For the purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this Public Notice.² Should no petition for reconsideration, application for review, or petition for judicial review be timely filed, the proceeding listed in this Public Notice shall be terminated, and the docket will be closed.

Domestic Section 214 Application Filed for the Transfer of Control of
Telephone USA of Wisconsin, LLC from Telephone USA Investments, Inc.
to Lumen Technologies, Inc.,
WC Docket No. 24-251, Public Notice, DA 24-935 (WCB 2024).

Effective Grant Date: October 13, 2024

For further information, please contact Myrva Charles at (202) 418-1506 or Megan Danner at (202) 418-1151, Competition Policy Division, Wireline Competition Bureau.

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¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

² *Id.*; see 47 CFR § 1.4 (Computation of time).

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

In the Matter of	)	
	)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

ORDER DENYING STAY PETITION

Adopted: October 15, 2024

Released: October 15, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On October 7, 2024, Pay Tel Communications, Inc. (Pay Tel) filed a petition requesting that the Commission stay its Report and Order in the captioned proceedings pending judicial review.¹ For the reasons discussed below, we deny Pay Tel'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, 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

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 Pay Tel Communications, Inc.'s Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 7, 2024) (Pay Tel Stay Petition); Declaration of Don. J. Wood, WC Docket Nos. 23-62, 12-375 (filed Oct. 7, 2024) (Wood Declaration). The Wright Petitioners, United Church of Christ Media Justice Ministry, and Pennsylvania Prison Society (collectively, the Public Interest Parties), filed an opposition to the Pay Tel Stay Petition. See Opposition to Pay Tel Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 14, 2024) (Public Interest Parties 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).

⁴ See, e.g., *2024 IPCS Order* at 60, para. 119.

Martha Wright-Reed Act.⁵ In setting the new rate caps, the Commission relied on cost and other data submitted by IPCS providers, including Pay Tel.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 October 2, 2024, the Wireline Competition Bureau (WCB or the Bureau) issued the *Securus Stay Denial Order*, which denied Securus Technologies, LLC's (Securus's) petition for an administrative stay of the *2024 IPCS Order*.¹⁰ In its October 7, 2024, petition, Pay Tel acknowledges that its legal arguments overlap, to a certain extent, with the legal arguments that we rejected in the *Securus Stay Denial Order*.¹¹ Pay Tel contends, however, that a stay pending judicial review is warranted because the *2024 IPCS Order* "is founded on several instances of clear error which create a likelihood of reversal on appeal," because "Pay Tel and other similarly situated [IPCS] providers" will be irreparably harmed if that *Order* is implemented, because a stay "would not injure third parties," and because "the balance of equities favors" such a stay.¹²

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 favor grant of the stay.¹³ A stay is an "'intrusion into the ordinary processes of administration and judicial

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. 427-71 (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 *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 Denying Stay Petition, DA 24-1035 (WCB rel. October 2, 2024) (*Securus Stay Denial Order*).

¹¹ Pay Tel Stay Petition at 1.

¹² *Id.* at i-ii.

¹³ *Securus Stay Denial Order* at para. 6; 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)).

review,’ . . . and accordingly ‘is not a matter of right, even if irreparable injury might otherwise result’” to the movant.¹⁴ The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.¹⁵ Pay Tel has failed to meet that burden.¹⁶

A. Pay Tel 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 it is likely to succeed;¹⁷ a “mere possibility of relief” is insufficient.¹⁸ 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.”¹⁹ Pay Tel principally argues that the *2024 IPCS Order* is inconsistent with the requirements of the Martha Wright-Reed Act and section 276(b)(1)(A) of the Communications Act because it set rate caps that fail to ensure that all IPCS providers are fairly compensated; excluded most categories of IPCS safety and security measure costs from its ratemaking calculus; failed to allow correctional facilities “to recover their demonstrated costs associated with providing IPCS”; and committed “other methodological errors exacerbating the harm to providers.”²⁰

7. *Fair Compensation for IPCS Providers.* Pay Tel argues that the Commission set rate caps that “fail to ensure that ‘all’ IPCS providers are ‘fairly compensated’” and critiques the Commission’s application of the fair compensation standard in section 276(b)(1)(A) in several respects.²¹ We find none of Pay Tel’s arguments persuasive. Pay Tel first asserts that while the Martha Wright-Reed Act allows the Commission to use industry-wide average costs in setting rate caps, it also may use individual provider costs in setting rates and “must allow *all* IPCS providers to recover their prudently-incurred costs.”²² This argument was raised in the rulemaking and, as we stated in denying Securus’s request for a stay, “the *2024 IPCS Order* squarely addressed it.”²³ As the Commission explained, the

¹⁴ *Nken*, 556 U.S. at 427 (internal citations omitted); *Securus Stay Denial Order* at para. 6.

¹⁵ *Securus Stay Denial Order* at para. 6; *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8 (citing *Nken*, 556 U.S. at 433-34).

¹⁶ Although Pay Tel challenges only certain aspects of the *2024 IPCS Order*, it requests that we stay that *Order*, including the rules it adopts, in its entirety. Pay Tel Stay Petition at 1 n.1. Pay Tel’s support for this request consists of statements that the *2024 IPCS Order* and accompanying rules were “adopted as part of a comprehensive plan of regulation which should be considered together as such” and “the segregation of individual components of the plan can lead to anomalous results.” Pay Tel Stay Petition at 1 n.1. Those statements fall far short of meeting the stay criteria and, in any event, are inconsistent with the Commission’s determinations, in the *2024 IPCS Order*, that “each of the rules and policies adopted” in that *Order* “shall be severable” from each other and that if any of those “rules or policies is declared invalid or unenforceable for any reason, the unaffected rules shall remain in full force and effect.” *2024 IPCS Order*, at 309, para. 598. See also Public Interest Parties Opposition at 3 (“Pay Tel seeks an overbroad stay of the entire [Martha Wright-Reed Act] Order while only addressing one aspect of the reforms adopted under the Order.”).

¹⁷ *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

¹⁸ *Id.* at 434 (internal quotation marks omitted).

¹⁹ *Virginia Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

²⁰ Pay Tel Stay Petition at 7.

²¹ *Id.* at 7-11.

²² *Id.* at 7 (emphasis in original); see also Martha Wright-Reed Act § 3(b)(1) (explaining that the Commission “may use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in “determining just and reasonable rates”).

²³ *Securus Stay Denial Order* at 4, para. 7; Public Interest Parties Opposition at 3 (arguing that “Pay Tel simply rehashes an argument that the Commission . . . has already rejected”).

statutory mandate of fair compensation “need not be evaluated on a provider-by-provider basis.”²⁴ 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).”²⁵ The Commission thus 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.”²⁶

8. In a similar vein, Pay Tel also argues that the Commission “effectively reads the ‘fair compensation’ requirement out of [s]ection 276 by collapsing it with, and giving primacy to, the new language added in the [Martha Wright-Reed Act] that the Commission ensure that ‘all rates and charges are just and reasonable.’”²⁷ This argument was also raised in the rulemaking and squarely addressed in the *2024 IPCS Order*.²⁸ There, the Commission explained that “giving effect to both standards requires a balanced approach that ‘emphas[izes] consumers’ (particularly incarcerated people’s) and provider’s right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of ‘payphone service,’ as well as ensuring that such rates ensure that ‘all payphone providers are fairly compensated.’”²⁹ Contrary to Pay Tel’s assertion, the Commission’s “rate-making methodology and the statutory interpretation of the Martha Wright-Reed Act ensure that both standards are given full effect.”³⁰

9. Pay Tel also selectively relies on certain statements in the *2024 IPCS Order* that it contends demonstrate infirmities with the Commission’s application of the fair compensation mandate.³¹ Pay Tel asserts that “of the twelve IPCS providers selected by staff for analysis, four of the twelve (i.e., 33%) will not be able to recover their demonstrated costs under the Order’s rate caps.”³² Pay Tel argues that “dismissal of one-third of the control group conflicts with the clear policy of [s]ection 276 to ‘promote competition’ among providers” and that “implicit in the Order’s reasoning is the flawed assumption that the domination of the industry by one or two providers is a desirable outcome intended by the [Martha Wright-Reed Act].”³³ We disagree. In the *2024 IPCS Order*, the Commission properly

²⁴ *2024 IPCS Order* at 37, para. 69; Public Interest Parties Opposition at 3 (asserting that Pay Tel’s “attack on Congress’s decision to permit setting just and reasonable rates on an industry-wide, rather than provider-by-provider, basis ‘ignores the fact that fair compensation does not require the Commission to adopt rate caps which allow for the recovery of inefficiently incurred costs.’” (citing *2024 IPCS Order* at 122, para. 219 n.778)).

²⁵ *Securus Stay Denial Order* at 4, para. 7.

²⁶ *2024 IPCS Order* at 38, para. 71; *2024 IPCS Order* at 66, para. 127 (explaining that “using industry average costs to set rates will best ensure rates that are just and reasonable for consumers and providers and provide fair compensation for providers”); Public Interest Parties Opposition at 4 (“Adopting rate caps based on average costs naturally means that some IPCS providers’ reported costs will be below their revenue at the rate caps. This is an outcome that Congress has deemed acceptable when it empowered the Commission to use industry-average costs to set ‘just and reasonable’ rates.”).

²⁷ Pay Tel Stay Petition at 7-8 (quoting 47 U.S.C. § 276(b)(1)(A)).

²⁸ *2024 IPCS Order* at 33, para. 60 n.207 (rejecting a claim that the *Order* collapses the fair compensation standard into the just and reasonable standard).

²⁹ *Id.* at 33, para. 60 (quoting *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Calling Services*, WC Docket Nos. 23-62 and 12-375, Notice of Proposed Rulemaking and Order, 38 FCC Rcd 2669, 2675-76, 2697-98, paras. 14, 73 (2023)).

³⁰ *2024 IPCS Order* at 33, para. 60 n.207.

³¹ *Cf. Securus Stay Denial Order* at 5, para. 10 (rejecting a similar argument from Securus “insofar as it selectively relies on certain statements in the *2024 IPCS Order*”).

³² Pay Tel Stay Petition at 8 (footnote omitted).

³³ *Id.* at 8-9.

“reject[ed] claims that [its] actions could harm competition.”³⁴ The Commission explained that “[c]ompetition should not be mistaken for the number of competitors” and that competition “delivers lower prices, adjusted for quality, and . . . may sometimes drive out inefficient competitors.”³⁵ Pay Tel also fails to account for the fact that the Commission’s estimate of IPCS providers that it projected would have potential revenues exceeding reported costs was “conservative” and that the Commission “likely underestimate[d] the extent to which providers w[ould] be able to recover their costs under [the Commission’s] rate caps.”³⁶

10. Pay Tel then claims that “the Order’s mathematical computation of market share fails to grapple with the substance of the problem created at the facility level.”³⁷ It argues that “[e]ven for the eight providers whose *total* revenue . . . is projected to exceed *total* reported expenses” that will not be true for each facility those providers serve, thus denying cost recovery “at almost 30% of the facilities serviced by the eight providers who are expected to recover their overall costs at a company level.”³⁸ According to Pay Tel, when “[c]ombined with the facilities put at risk for the four providers not recovering their costs, some {[]} facilities are at risk under the Commission’s new regulatory approach—representing 31% of all jails and prisons studied by the Commission in setting rate caps.”³⁹ Pay Tel assumes that “most, if not all, of the facilities at risk are jails” and concludes that “approximately one-half of all jails currently receiving IPCS are at risk of losing service.”⁴⁰

11. As to Pay Tel’s initial argument that the Commission “must allow *all* IPCS providers to recover their prudently-incurred costs,”⁴¹ in the *2024 IPCS Order*, the Commission concluded 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” rather than on a facility-by-facility basis.⁴² This conclusion is anchored in the Martha Wright-Reed Act’s grant of “explicit authority” to use industry-wide average costs in setting IPCS rates.⁴³ As the Commission observed, “[u]se of industry-wide average costs, of necessity, evaluates provider compensation on a more aggregated—rather than provider-by-provider—basis.”⁴⁴

12. Furthermore, Pay Tel ignores the fact that the Commission’s rate cap structure was designed to capture the differences in costs across facilities of all types and sizes, to the extent the data permitted. Thus, in setting IPCS rate caps, the Commission adopted “a rate cap structure that first

³⁴ *2024 IPCS Order*, Appx. J at 455, para. 7.

³⁵ *Id.*

³⁶ *Id.* at 121, para. 217.

³⁷ Pay Tel Stay Petition at 9.

³⁸ *Id.* at 9 (emphasis in original); Wood Declaration at para. 21.

³⁹ *Id.* at 10; Wood Declaration at para. 22. Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

⁴⁰ Pay Tel Stay Petition at 10.

⁴¹ *Id.* at 7 (emphasis in original).

⁴² *2024 IPCS Order* at 122, para. 219.

⁴³ *Id.* at 36, para. 68; Martha Wright-Reed Act § 3(b)(1). See also Public Interest Parties Opposition at 5 (“At bottom, Pay Tel essentially ignores Congress’s decision to shift away from a per-call compensation scheme under the [Martha Wright-Reed Act]. Specifically, in the [Martha Wright-Reed Act], Congress amended the section 276 ‘fair compensation’ requirement to no longer ask that the Commission evaluate payphone rates on a per-call basis or ensure that providers were fairly compensated for ‘each and every’ completed call. . . . Pay Tel’s argument seeks to undo this shift.”).

⁴⁴ *2024 IPCS Order* at 36-37, para. 68.

distinguishes between two types of facilities (jails and prisons) and then four tiers of jails based on size.⁴⁵ The Commission did so as part of its implementation of the directive in the Martha Wright-Reed Act to “consider . . . differences in the costs” incurred to provide IPCS “by small, medium, or large facilities.”⁴⁶ Because record data did “in fact, indicate significant variations in costs due to facility size” the Commission decided to adopt a “more granular tiering structure” to better capture cost differences between facilities of different sizes.⁴⁷

13. We also find unpersuasive Pay Tel’s assertion that one half of all jail facilities risk losing service under the Commission’s rate caps. Pay Tel has not substantiated this assertion and otherwise ignores the Commission’s analysis of the effect of its IPCS rate caps on small jails in the *2024 IPCS Order*. As the Commission explained, “[c]ontrary to some claims, which argue that [the Commission’s] rate caps impact smaller providers and thus smaller facilities, provider size is no predictor of the choice to serve very small jails.”⁴⁸ In fact, “[{]}”⁴⁹ Thus, “it is implausible that [the Commission’s] caps will prevent supply in small jails.”⁵⁰ Pay Tel asserts that its claim regarding a potential for loss of service “relies specifically on the Commission’s analysis as reflected in the order” but adds nothing more than speculation on this point.⁵¹ We are thus unconvinced by Pay Tel’s arguments.

14. Finally, Pay Tel takes issue with the fact that the *2024 IPCS Order* references “efficient” and “inefficient” providers in connection with its discussion of cost recovery.⁵² Specifically, Pay Tel alleges that the *2024 IPCS Order* “applies a circular definition of ‘efficiency’ in which the ‘inefficient’ providers are deemed as such only because their average costs exceed the average cost of the dominant providers after erroneously and arbitrarily rejecting the majority the safety and security costs reported by those companies.”⁵³ To the extent safety and security costs are included, Pay Tel states that its reported costs “are consistent with industry average costs and consistent with the operation of an efficient provider.”⁵⁴ Pay Tel’s argument thus relies primarily on the notion that the Commission improperly excluded certain safety and security costs, and we therefore take it up with its other arguments about

⁴⁵ *Id.* at 79, para. 146.

⁴⁶ Martha Wright-Reed Act § 3(b)(2). As the Public Interest Parties highlight, “the Commission . . . found that 72% of all reported facilities would have capped revenues in excess of costs” (citing *2024 IPCS Order*, Appx. J at 454-55, para. 6)).

⁴⁷ *2024 IPCS Order* at 81-82, paras. 148, 150. “The Commission sensibly ‘decline[d] to set rate caps that ensure cost recovery for providers with unusually 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). Instead the Commission made clear that ‘if such providers exist, they can seek a waiver.’” *Securus Stay Denial Order* at 4-5, para. 8 (footnote omitted).

⁴⁸ *2024 IPCS Order*, Appx. J at 454, para. 6.

⁴⁹ *Id.*, Appx. J at 454-55, para. 6; *see also id.*, Appx. J at 454, para. 6 n.14 (noting that “the eight providers which already have revenues less site commissions beneath [the Commission’s] caps serve an overwhelming number of small and very small facilities, as well as medium and large facilities”).

⁵⁰ *Id.*, Appx. J at 455, para. 6.

⁵¹ Pay Tel Stay Petition at 10 (alleging that the *2024 IPCS Order* “possibly” puts at risk service in one half of all jails).

⁵² *Id.* at 10; Wood Declaration at para. 23.

⁵³ Pay Tel Stay Petition at 10-11 (emphasis omitted).

⁵⁴ *Id.* at 11. *See also* Public Interest Parties Opposition at 5 (“Pay Tel attempts to blame any potential inefficiencies on the Commission’s decision to prohibit the recovery of certain safety and security costs under the new rates. However, ‘excluding certain costs is precisely the task that Congress required the Commission to perform’ under the [Martha Wright-Reed Act].” (quoting *Securus Stay Denial Order* at 5, para. 9)).

safety and security costs below.

15. *Treatment of Safety and Security Costs.* Pay Tel contends that the Commission's handling of providers' varying safety and security costs made Pay Tel appear to be an inefficient provider. But Pay Tel unwittingly supplies the response to its own critique in observing that "[t]he percentage of total service costs reported as falling into one of the seven Safety & Security categories varied significantly by Provider."⁵⁵ Indeed, the Commission acknowledged that the categories of safety and security costs reported in the 2023 Mandatory Data Collection were "imprecise."⁵⁶ It also acknowledged that "providers' allocations of their safety and security costs are at times inexact among these categories."⁵⁷ 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 uses of tasks and functions within a category [were] not used and useful, the entire category [was] treated as not used and useful" in establishing the lower bounds of the Commission's zones of reasonableness.⁵⁸ The Commission also adjusted its rate setting within those zones "to 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."⁵⁹ 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 framework.

16. Thus, in constructing the lower bounds of the zones of reasonableness, the Commission appropriately removed "costs of those categories of safety and security measures that [the Commission found] generally . . . not used and useful in the provision of IPCS."⁶⁰ In doing so, it actually "retain[ed]" a significant portion of providers' reported safety and security costs, i.e., \$180 million.⁶¹ But the Commission concluded that incorporating into its lower bounds those safety and security costs that it found not to be used and useful "would run counter to the purposes and language of the Martha Wright-Reed Act and would fail to yield just and reasonable rates."⁶² Thus, contrary to Pay Tel's assertions, the Commission's treatment of certain safety and security costs was informed by the limitations of the data before the Commission and the dual requirements of the Martha Wright-Reed Act to ensure just and reasonable rates and charges for IPCS consumers and fair compensation for IPCS providers.

17. Pay Tel argues that the Commission erred in its evaluation and treatment of safety and security costs in several respects, none of which we find persuasive.⁶³ First, Pay Tel suggests that the Commission "explicitly rejects the notion that the IPCS [sic] has any responsibility to 'protect the general public' and 'ensure'" that IPCS are used safely.⁶⁴ Here again the Commission spoke clearly in the 2024

⁵⁵ Wood Declaration at para. 24; *see also id.* at para. 23 (noting that "the cost distinctions observed between Providers for both audio and video IPCS are largely an artifact of how each Provider reported costs associated with Safety & Security").

⁵⁶ 2024 IPCS Order at 205, para. 385.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 206, para. 387.

⁶⁰ *Id.* at 111, para. 200.

⁶¹ *Id.*

⁶² *Id.* at 111-12, para. 200.

⁶³ *See generally* Pay Tel Stay Petition at 11-15.

⁶⁴ *Id.* at 12 (quoting 2024 IPCS Order at 202, para. 380).

IPCS Order when it rejected the same argument from Pay Tel.⁶⁵ The Commission “do[es] not dispute, and indeed the Commission has long recognized, that communications services for incarcerated people occur in a unique context” and, as a result, “the Commission has recognized that there are certain features that ensure these communications services are available to incarcerated people and can be used safely.”⁶⁶ But the Commission noted that the need to ensure the safe use of IPCS “do[es] not overcome [the Commission’s] responsibility here where incarcerated people or their loved ones are the ones paying for and using IPCS subject to Commission-specified rate regulations.”⁶⁷ Nothing has changed since the Commission made these statements.

18. Pay Tel also argues that the Commission adopted a “newly-minted user benefit standard” in its application of the used and useful framework, which “improperly fails to give weight to the technology and service configuration determinations of the local governmental entities tasked with operating confinement facilities and providers who are experts on their systems and the technology needed to keep IPCS safe and secure” and ignores that “IPCS users are the ‘causers’ of the safety and security costs in question.”⁶⁸ We disagree.

19. The Commission did not adopt a new “user benefit” standard in its evaluation of safety and security measures. Pay Tel raised this argument in the rulemaking and the Commission responded to it, noting that “the used and useful framework, as applied for decades by the Commission in its familiar ratemaking functions, is an equitable principle that prevents ratepayers from having to pay for costs that are primarily incurred for the benefit of the provider, while allowing regulated entities to be compensated for providing service.”⁶⁹ Contrary to Pay Tel’s claims, it is this well-established framework that the Commission applied in 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.”⁷⁰

20. The Commission also did not discount, second guess, or otherwise intrude upon the discretion of correctional officials and IPCS providers in its evaluation of the costs associated with safety and security measures that should be included in the Commission’s ratemaking calculus and those that should not. The Commission’s actions in the *2024 IPCS Order*, and in particular its actions regarding safety and security measures “[were] about fulfilling [the Commission’s] obligation under the Martha Wright-Reed Act to adopt a compensation plan that ensures just and reasonable rates and charges for IPCS consumers and providers and fair compensation for IPCS providers.”⁷¹ None of the Commission’s actions “prohibit any correctional institution from implementing any safety and security measure that it deems appropriate or desirable.”⁷² The Commission’s actions do, however, “ensure that IPCS consumers do not bear the costs of those safety and security measures that are not used and useful or necessary to

⁶⁵ *2024 IPCS Order* at 202, para. 380 n.1362 (“Pay Tel mischaracterizes our rejection of Securus’s overbroad interpretation of ‘customer’ as a more general rejection of the need to provide appropriate safety and security measures as part of the provision of IPCS.”).

⁶⁶ *Id.* at 192-93, para. 367.

⁶⁷ *Id.* at 202, para. 380.

⁶⁸ Pay Tel Stay Petition at 13-14.

⁶⁹ *2024 IPCS Order* at 205, para. 384 n.1382; Public Interest Parties Opposition at 6 (noting that “[u]nder Commission precedents, the ‘used and useful’ standard calls for an evaluation of whether a cost ‘promotes customer benefits, or is primarily for the benefit of the carrier’” (quoting *2024 IPCS Order* at 195, para. 370)).

⁷⁰ *Id.* at 208, para. 389.

⁷¹ *Id.* at 208-09, para. 390.

⁷² *Id.* at 32, para. 57. See also Public Interest Parties Opposition at 6 (explaining that the exclusion of certain safety and security costs “by no means prohibits what safety and security measures facilities may employ, like Pay Tel erroneously suggests”).

provide IPCS regardless of how desirable these measures may be to correctional institutions.”⁷³ And the Commission did so “in applying bedrock ratemaking precedent to evaluate all of the claimed IPCS costs and expenses in the record before [the Commission] to determine the extent to which consumers should bear those costs.”⁷⁴ Pay Tel does not attempt to address the Commission’s extensive evaluation of safety and security costs in the *2024 IPCS Order* or provide any information or data to substantiate its claim that the Commission’s ratemaking exercise intruded upon the discretion of correctional official and IPCS providers in connection with safety and security measures.

21. Instead of applying the used and useful framework to safety and security costs as the Commission did, Pay Tel suggests that the proper focus of the inquiry is on IPCS consumers who “are the ‘causers’ of the safety and security costs in question and should therefore bear such costs under well-established [cost-causation] principles endorsed by the Commission.”⁷⁵ This same suggestion was considered and rejected by the Commission in the *2024 IPCS Order*.⁷⁶ The Commission explained that the cost-causation analysis applicable in intercarrier compensation reform was not directly comparable to the fundamentally different context of IPCS.⁷⁷ As the *2024 IPCS Order* further explains, “costs that are not used and useful in the provision of IPCS are not caused by IPCS communications, and thus neither party to such communications reasonably can be seen as causing those costs through the use of IPCS.”⁷⁸

22. Finally, Pay Tel criticizes the Commission’s application of the used and useful standard, arguing that it applied the standard “in an arbitrary and incoherent manner.”⁷⁹ This is because, in Pay Tel’s view, the Commission “prohibits recovery for safety and security measures it concedes benefit users while allowing recovery for measures it says do not benefit users.”⁸⁰ We disagree with this characterization. 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.⁸¹ But that does not mean the costs of those functions, much less all the costs within that category, should be recoverable under the used and useful standard. 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.”⁸² Conversely, in other circumstances there may be categories that have no direct benefit to the consumer but that the

⁷³ *Id.* at 32-33, para. 57. *See also* Public Interest Parties Opposition at 6 (“Excluding safety and security costs that are not used and useful to the IPCS ratepayer from the new rate caps is merely a regulation of what facilities and service providers may charge rate payers for these measures.”)

⁷⁴ *Id.* at 209, para. 390.

⁷⁵ Pay Tel Stay Petition at 13.

⁷⁶ *2024 IPCS Order* at 133, para. 246 n.846.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Pay Tel Stay Petition at 14.

⁸⁰ *Id.*

⁸¹ *2024 IPCS Order* at 212, para. 394 (recognizing that “some functions in this category [law enforcement support services] may provide a benefit to incarcerated people”). The zone of reasonableness approach the Commission used in developing its overall rate caps helped to account for these outcomes and the Commission acknowledged that in the *2024 IPCS Order*. *See id.* at 196, 206-08, paras. 372, 387-88. *See also* Public Interest Parties Opposition at 7 (noting that “tasks that benefit IPCS users do not always also facilitate the provision of IPCS”).

⁸² *Id.* at 213, para. 394.

Commission concluded were used and useful and therefore recoverable.⁸³ 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.⁸⁴

23. *Facility Costs.* In the *2024 IPCS Order*, the Commission permitted “IPCS providers to reimburse correctional facilities for the used and useful costs the facilities incur to enable the provision of IPCS” to incarcerated people.⁸⁵ Pay Tel claims that the Commission acted arbitrarily in permitting this reimbursement “despite failing to allow providers to first recover” those costs either through the rate caps or rate cap additives.⁸⁶ This argument ignores the Commission’s decision to incorporate facility costs into its final rate caps by utilizing facility costs as one of several factors in establishing its final rate caps above the lower bounds.⁸⁷ While Pay Tel questions the Commission decision not to include a rate additive of \$0.02 per minute to its rate caps to account for used and useful correctional facility costs,⁸⁸ the Commission appropriately concluded that the data before it did not enable it “to quantify such costs with anything near the level of specificity that would be required to adopt a specific “just and reasonable” additive reflecting used and useful correctional facility costs.”⁸⁹

24. Pay Tel contends that the Commission’s decision to permit IPCS providers to reimburse correctional facilities for the used and useful costs that the facilities incur to enable the provision of IPCS is both inconsistent with the Commission’s prohibition against the payment of site commissions associated with IPCS and “ineffectual.”⁹⁰ The Commission, however, “decouple[d]” the “reimbursement of correctional facilities for costs used and useful in providing IPCS” from “other IPCS provider payments to correctional facilities” and excluded such reimbursement to facilities from its prohibition against site commissions.⁹¹ As indicated above, the Commission’s ratemaking calculus specifically recognized that facilities incur used and useful IPCS costs. The procedure the Commission chose to enable facilities to recover those costs—negotiations between IPCS providers and correctional officials—

⁸³ For example, 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.

⁸⁴ *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); Public Interest Parties Opposition at 7 (noting that “Pay Tel has notably failed to provide any examples of a particular safety and security cost not generally included in the rate caps that is, in fact, used and useful”).

⁸⁵ *2024 IPCS Order* at 132, para. 246.

⁸⁶ Pay Tel Stay Petition at 15. Pay Tel’s acknowledgement that the *2024 IPCS Order* permits IPCS providers to reimburse facilities for the costs they incur in making IPCS available to incarcerated people, Pay Tel Stay Petition at 15, contradicts its contention that the Commission erred “by failing to allow facilities to recover” those costs. *Id.*

⁸⁷ *Securus Stay Denial Order* at 11-12, para. 25 (citing *2024 IPCS Order* 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”).

⁸⁸ Pay Tel Stay Petition at 16.

⁸⁹ *2024 IPCS Order*, at 94, para. 169; *see id.* (recognizing that, given the state of the record, the Commission could not accept at face value a \$0.02 per minute additive, or any alternative additive, and simultaneously ensure that its rate caps would be just and reasonable and fairly compensatory). Contrary to Pay Tel’s argument, Pay Tel Stay Petition at 15, the Commission appropriately excluded any estimate of facility costs from the lower bounds of the zones of reasonableness given the absence of reliable facility cost data. *Securus Stay Denial Order* at 11-12, para. 25 (quoting *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.”)).

⁹⁰ Pay Tel Stay Petition at 17.

⁹¹ *2024 IPCS Order* at 143-44, para. 242.

is a reasonable one, given the sparse data on facility costs in the rulemaking record. While IPCS providers and correctional officials may encounter difficulties in determining the amounts of reimbursement providers may pay facilities, the staggered dates for complying with the prohibition against site commissions explicitly recognize those difficulties.⁹² Pay Tel makes no claim that it and the facilities it serves will be unable to determine those amounts within the specified time frames.

25. *Other Methodological Issues.* Pay Tel claims that the “Order commits a number of methodological and similar errors that materially and adversely impact providers.”⁹³ While Pay Tel does not substantiate these claims and provides no support for its assertions, it nonetheless contends that each of the alleged errors “improperly served to understate actual IPCS costs to the harm of providers.”⁹⁴ Pay Tel’s alleged methodological issues are addressed below.

26. *Reliance on Total Costs.* Pay Tel claims the Commission erred in using “unbilled minutes . . . to calculate rate caps.”⁹⁵ In the *Securus Stay Denial Order*, we rejected a similar allegation made by Securus,⁹⁶ stating that, “[i]n 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.”⁹⁷ As the Commission determined in the *2024 IPCS Order*, “[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.”⁹⁸ Consistent with our prior finding with regard to Securus, we find here that Pay Tel’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.”⁹⁹ “[T]he 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.”¹⁰⁰ The *Securus Stay Denial Order* also recognized the variability of facilities’ mandates to IPCS providers to offer “free” calls and hence the inherent unreliability of relying on billed minutes alone, stating that “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.”¹⁰¹

⁹² *Id.* at 302, para. 588.

⁹³ Pay Tel Stay Petition at 17. *See also* Public Interest Parties Opposition at 8 (explaining that Pay Tel “rehashes several claims from Securus’s petition for stay regarding . . . certain ‘methodological errors’ and that the “Bureau has comprehensively explained why these claims lack merit in its order denying Securus’s request”).

⁹⁴ Pay Tel Stay Petition at 17.

⁹⁵ *Id.*

⁹⁶ *Securus Stay Denial Order* at 9-10, paras. 19-21.

⁹⁷ *Id.* at 9, para. 19 (citing *2024 IPCS Order* at 107, para. 190).

⁹⁸ *2024 IPCS Order*, Appx. E at 378, para. 4.

⁹⁹ *Securus Stay Denial Order* at 9, para. 20 (citing *2024 IPCS Order*, Appx. E at 378, para. 4 n.8).

¹⁰⁰ *2024 IPCS Order*, Appx. E at 378, para. 4 n.8; *see Securus Stay Denial Order*, at para. 20 (recognizing that rate caps based on the average costs of billed minutes would result in incarcerated people who receive relatively few free minutes to subsidize other IPCS users).

¹⁰¹ *Securus Stay Denial Order* at 10, para. 21. Furthermore, as we observed in regard to Securus’s stay petition, “the number of unbilled minutes is {[]}, and would have at most only *de minimis* impact on [Pay Tel] and other providers. 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 all providers. Thus, excluding unbilled minutes in the calculation of the rates is unlikely to materially impact the actual rate caps.” *Id.* at 10, para.

(continued....)

27. *Inflation.* Pay Tel claims that the Commission “refus[ed] to account for inflation when setting rate caps.”¹⁰² We addressed and rejected a similar claim made by Securus in the *Securus Stay Denial Order*.¹⁰³ As noted there, “the Commission expressly acknowledged accounting for inflation as one of a number of factors used in setting its rate caps.”¹⁰⁴ We added that “[s]etting rate caps above the lower bounds will help to account for . . . any inflation not offset by productivity growth.”¹⁰⁵ Pay Tel makes no attempt to address or quantify the role productivity increases play in offsetting inflation. It also does not acknowledge that inflation in the telecommunications industry has been lower than in the economy generally.¹⁰⁶

28. *Compliance Costs.* Pay Tel claims that the Commission “exclud[ed] the costs of complying with its new rules from its rate cap calculations.”¹⁰⁷ Pay Tel is mistaken. As we recognized in the *Securus Stay Denial Order*, “[w]hile the Commission stated that it generally excluded one-time implementation costs as being inappropriate for inclusion in permanent rate caps, it nonetheless included compliance costs as a factor in its rate setting.”¹⁰⁸ The Commission “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.¹⁰⁹ The *2024 IPCS Order* took “the conservative approach of setting [its] rates somewhat above the lower bounds to account for” these and other costs providers may incur.¹¹⁰

29. *Compliance Dates for Ancillary Service Charges.* Pay Tel claims that the *2024 IPCS Order* does not contain a “clear and direct statement” on “when the prohibition on ancillary [service] charges takes effect” and argues in favor of delaying the compliance dates for the prohibition as the Commission did for its rate cap and site commission reforms.¹¹¹ Pay Tel further claims that the *Securus Stay Denial Order* “fails to consider or explain why the ancillary service prohibition should be treated

20 n.82 (quoting Opposition to Securus Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (Public Interest Parties Opposition to Securus Stay Petition)) (quotation marks omitted).

¹⁰² Pay Tel Stay Petition at 17.

¹⁰³ *Securus Stay Denial Order* at 11, para. 23.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* (citing *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 [the Commission] 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.”)).

¹⁰⁶ *2024 IPCS Order* at 68, n.431 (“[H]istorically, growth in the Telecommunications [producer price index (PPI)] has been lower, on average, than general measures of inflation. 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 [gross domestic product] Deflator over the same period of 2.6%.”).

¹⁰⁷ Pay Tel Stay Petition at 17. A similar allegation by Securus was addressed and dismissed in the *Securus Stay Denial Order*. See *Securus Stay Denial Order* at 11, para. 24.

¹⁰⁸ *Securus Stay Denial Order* at 11, para. 24 (citing *2024 IPCS Order* at 119, para. 214).

¹⁰⁹ *Id.*

¹¹⁰ *2024 IPCS Order* at 119, para. 214.

¹¹¹ Pay Tel Stay Petition at 19. See generally *id.* at 19-21. Pay Tel references “the Bureau’s new interpretation” of the Commission’s prohibition on ancillary fees. *Id.* at 20. To clarify, the *Securus Stay Denial Order* restated the relevant provisions of the *2024 IPCS Order* related to the timing of that provision. Further, Pay Tel’s request would more naturally be the subject of a petition for clarification as opposed to a stay petition, the granting of which would not provide the clarification Pay Tel seeks but would rather stay the entirety of the Order, precluding a resolution of the issue and frustrating the goals of IPCS reform and the Commission’s implementation of the Martha Wright-Reed Act generally.

differently and independently from the other components of its ‘comprehensive’ rate reforms.”¹¹² Pay Tel misses the *2024 IPCS Order*’s clear direction.

30. As previously indicated in the *Securus Stay Denial Order*,¹¹³ the *2024 IPCS Order* delays compliance with its rate cap and site commission reforms, recognizing that “IPCS providers, governmental officials, and correctional officials may need additional time . . . to renegotiate contracts in response to our actions today.”¹¹⁴ The Commission explained that the staggered compliance dates it adopted for the rate caps and site commission reforms “strike[] a reasonable balance between” the need to “alleviate the burden of unreasonably high . . . rates” and the fact that IPCS providers and correctional officials “will need more than 30 days to execute any contractual amendments necessary to implement the new” rate cap and site commission reforms.¹¹⁵ The *2024 IPCS Order* further clarified that “all other rules and requirements adopted in this Order also will take effect 60 days after notice is published in the Federal Register.”¹¹⁶ It found that this effective date “best balances the need to bring these important, pro-consumer rules into effect expeditiously while affording IPCS providers sufficient time to implement any changes necessary to comply with [the Commission’s] rules.”¹¹⁷ The staggered compliance dates for rate caps and site commission reform are therefore properly understood as exceptions to the general compliance requirements applicable to other provisions of the *2024 IPCS Order*. The *2024 IPCS Order* noted that the Commission “do[es] not view [its] other reforms as involving similar complexities such that a longer effective date period is necessary.”¹¹⁸

31. Pay Tel nonetheless argues that “the prohibition of ancillary fees is part and parcel of a comprehensive approach to rate setting” and that ending ancillary service charges “is one component of ‘comprehensive’ rate reform.”¹¹⁹ While it is true that the Commission’s reforms are designed to work in concert, that fact alone is insufficient to justify extending compliance dates for the ancillary service charge prohibition. The elimination of separate ancillary service charges was based on “four independently sufficient findings,” which generally were independent from the specific IPCS rate caps established in the *2024 IPCS Order*.¹²⁰ For example, the conclusions that eliminating separate ancillary services charges: (1) better reflected the nature of IPCS offerings;¹²¹ (2) would eliminate incentives for marketplace abuses designed to inflate ancillary service fee revenue;¹²² (3) accounted for the lack of data sufficient to set separate just and reasonable charges for individual ancillary services;¹²³ and (4) would yield other benefits such as operational efficiencies and reduced barriers to communications,¹²⁴ are entirely distinct from the details of the prospective IPCS rate caps. Pay Tel also argues that “ancillary payments cannot be eliminated until site commission payments are eliminated—and site commission

¹¹² *Id.* at 21.

¹¹³ See generally *Securus Stay Denial Order* at 13-14, paras 28-29.

¹¹⁴ *2024 IPCS Order* at 305, para. 588; see also *Securus Stay Denial Order* at 14, para. 29.

¹¹⁵ *2024 IPCS Order* at 305, para. 589 (internal quotations omitted).

¹¹⁶ *Id.* at 308, para. 595.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Pay Tel Stay Petition at 20.

¹²⁰ *2024 IPCS Order* at 223-24, para. 415.

¹²¹ *Id.* at 223-24, paras. 415-17.

¹²² *Id.* at 224-26, paras. 418-19.

¹²³ *Id.* at 226-27, para. 420.

¹²⁴ *Id.* at 227-28, paras. 421-24.

payments cannot be eliminated until contracts are revised.”¹²⁵ Apart from the revenue reduction that Pay Tel asserts is involved, Pay Tel does not make clear why eliminating site commissions should be a necessary predicate for eliminating ancillary service charges. And Pay Tel also does not address the fact that it will continue to benefit from the higher prior rate caps as it manages its transition to the new rate caps and implements the Commission’s site commission reforms. Thus, there also is no practical necessity that the new IPCS rate caps be in place before the prohibition on separate ancillary service charges workably could take effect.

32. Pay Tel claims that the 2024 IPCS Order’s inclusion of “passthrough charges” as one type of term or condition that could require material alteration of contracts “could reasonably be understood to include ancillary fees.”¹²⁶ But the adoption of staggered compliance dates for rate caps and site commission reforms was premised on the fact that these were “terms and conditions that would require material alteration through [contract] renegotiation.”¹²⁷ Apart from its claims regarding the financial impact of prohibiting ancillary service charges, Pay Tel stops short of contending that ending ancillary service charges would require material alteration of its IPCS contracts, nor does it provide any support that its IPCS contracts have, in fact, been or are being renegotiated to comply with the prohibition on ancillary service charges. It also claims that “the existing recovery of ancillary charges as a separate revenue source is part of the overall pool of revenue from which negotiations over facility contracts have taken place.”¹²⁸ But, again, this assertion, while unsurprising, falls short of claiming and substantiating a claim that these changes have required or will require material alterations to their IPCS contracts.

33. Pay Tel thus has failed to establish that its challenges to the Commission’s actions are likely to succeed on the merits.

B. Pay Tel Has Failed to Show It Will Suffer Irreparable Harm

34. Pay Tel 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 Pay Tel has not met its burden to make and substantiate these showings.

35. The crux of Pay Tel’s argument is that it “will suffer direct and unrecoverable economic losses” and “significant” compliance costs without a stay.¹³² Specifically, Pay Tel alleges that the reduced

¹²⁵ Pay Tel Stay Petition at 20.

¹²⁶ *Id.* at 20.

¹²⁷ 2024 IPCS Order at 304, para. 387.

¹²⁸ Pay Tel Stay Petition at 21.

¹²⁹ *Marichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Clougherty of Full Gospel Churches v. England*, 354 F.3d 290, 297 (D.C. Cir. 2005)); *Securus Stay Denial Order* at 15, para. 31; see *Lynnda Stay Denial Order*, 36 FCC Red at 1267, para. 10.

¹³⁰ *Wt. 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 Red 11754, 11757, para. 8 (1996) (quoting *Wt. Gas*, 758 F.2d at 674).

¹³² Pay Tel Stay Petition at 18. Although Pay Tel also claims it will suffer “stranded costs relating to prior investment,” Pay Tel neither identifies which investments may be stranded, nor quantifies the costs allegedly involved. See *id.*; see also Wood Declaration at para. 14 (alleging, without detail, that Pay Tel has {{

}}); Pay Tel Stay Petition at 2 (“Pay Tel has re-invested . . . by developing and implementing educational, vocational training, and self-help resources.”). We (continued. . .)

rates imposed under the Commission's rate caps will result in a ()¹³³ Rather than challenge the 2024 IPCS Order's estimates or challenge the methodology that led to them, Pay Tel offers its own unsubstantiated figures, which we decline to adopt on the record before us.¹³⁴ Notably, Pay Tel's claimed future losses grossly exceed those calculated in the 2024 IPCS Order even when using costs the Commission found likely to be overstated, which estimated a smaller ()¹³⁵ in combined audio and video communications revenues assuming no increase in demand.¹³⁶ This shortfall is further winnowed after accounting for the effects of audio demand elasticity, which suggests audio communications minutes will increase as the price per minute falls, largely offsetting this shortfall.¹³⁷ We estimate this increase in audio revenue to total roughly ()¹³⁸ Given the Commission's lower interim video IPCS rate caps, video demand elasticity, which we expect to perform similarly, will

find Pay Tel's claims of stranded investment to be both speculative and unsupported. And, as we explained in response to Securus, we are unconvinced by claims that () will ebb as a result of the 2024 IPCS Order. See *Securus Stay Denial Order* at ().

() To the extent Pay Tel asserts a claim for "significant compliance costs" as well, we find it has neither substantiated that claim nor provided evidence of such costs, and deny such claims along similar grounds, consistent with the *Securus Stay Denial Order*. See Pay Tel Stay Petition at 18; *Securus Stay Denial Order* at 16, para. 35 (refuting claims of harm based on compliance costs).

¹³³ Pay Tel Stay Petition at 21 (claiming ()

()). We note that, inconsistent with its claim of earning a ()

() Pay Tel's 2022 data show that its ()

() Compare Pay Tel Stay Petition at 4 with 2024 IPCS Order, Appx. F at 394, Tbl. 9. This amounts to a difference of nearly () which we cannot explain on the data before us, leaving us wary of accepting the proffered figures, as discussed further below.

¹³⁴ Pay Tel states that their estimated () were reached by estimating revenues at the new rate caps and adjusting "[a]ll Ancillary Service Charges" and "[a]ll costs associated with the payment of site commissions" to zero. See Wood Decl. at paras. 4-5. We find these numbers unsubstantiated and difficult to verify. For example, while Dr. Wood appears to have included site commissions in his estimated reduction of revenues, the lack of detail leaves it impossible to understand whether his treatment of site commissions is appropriately reflected elsewhere, such as in his calculation of "EBITDA" and "EBT." See, e.g., *id.* at para. 9.

Additionally, we note that the 2022 revenue and site commission data Pay Tel cites in its petition differ from those the Commission derived from Pay Tel's submitted data and relied upon in the 2024 IPCS Order by a cumulative difference of nearly \$1 million. Compare Wood Decl. at para. 5 (stating 2022 audio service revenue of () with 2024 IPCS Order, Appx. F at 392, Tbl. 7 (() ()); Wood Decl. at para. 6 (stating 2022 video service revenue of () with 2024 IPCS Order, Appx. F at 392, Tbl. 7 (() ()); Wood Decl. at para. 7 (stating 2022 Ancillary Service revenue of () with 2024 IPCS Order, Appx. F at 392, Tbl. 7 (() ()); Wood Decl. at para. 8 (stating 2022 site commissions of () with 2024 IPCS Order, Appx. F at 386, Tbl. 3 (() ()). Dr. Wood obtained access to the confidential version of the 2024 IPCS Order under the relevant Protective Orders in this proceeding and presumably had an opportunity to compare those submitted data with the data included in his declaration but does not articulate a reason for such differences; nor does he provide the calculations underlying his data that might enable us to reconcile these differences.

¹³⁵ The Commission estimated Pay Tel's total IPCS potential revenue at the new rate caps to be () () while using costs the Commission found likely to be overstated, and while assuming no increase in demand at the lower rates. See 2024 IPCS Order at 455-54, Appx. J, para. 4 n.6 & Tbl. 3. In subsequent *in parte* filings, Pay Tel neither disputed nor refuted these estimates. See generally Letter from Marcus W. Traffen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 23-62, 12-375 (filed July 9, 2024) (Pay Tel July 9, 2024 *Ex Parte*); Letter from Marcus W. Traffen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375 (filed July 11, 2024).

¹³⁶ 2024 IPCS Order at 501, para. 381.

¹³⁷ A description of the staff calculations resulting in this estimate is set forth in Appendix A.

also generate additional revenue. Therefore, other things remaining constant, we would expect to see a similar increase in video communications minutes which would further offset this shortfall. In sum, we find Pay Tel's claims insufficient to demonstrate irreparable harm, particularly because the new rate caps will leave Pay Tel in a roughly similar position to that which Pay Tel (b) (7), when its reported IPCS expenses including site commissions (b) (7).¹³⁸

36. Tied to this claim, Pay Tel also alleges that, for the period beginning November 19, 2024, Pay Tel will suffer lost ancillary service charge revenue of (b) (7) annually from the prohibition of such charges, and alleges additional annual payments of (b) (7) in ongoing site commission payments it will remain obligated to make.¹³⁹ We find Pay Tel has not substantiated these contentions. As we stated in the *Securus Stay Denial Order*, the new rate caps include recovery of all costs of providing ancillary services.¹⁴⁰ Claims of lost ancillary services revenue are therefore misleading: in the long term, the Commission's IPCS rate caps will allow providers to recover all ancillary service costs as part of their per-minute charges.¹⁴¹ And in the short term, before Pay Tel has fully instituted the new rate caps, it will continue to charge above-cost rates. Therefore, because the costs of ancillary services are subsumed within the new lower rate caps, the rates that Pay Tel is currently charging will allow it to recover its costs of providing both IPCS and ancillary services, plus an additional margin of profit to the extent that their current rates lie above the new rate caps.¹⁴² Although full compliance with the prohibition on the payment of site commissions will not take place immediately, that same interim margin Pay Tel and other providers will collect from charging above-cost rates will more than account for their site commissions costs over the same period.¹⁴³ We therefore find claims of significant losses from the prohibition on ancillary service charges meritless, and find no irreparable harm stemming from Pay Tel's purported lost revenues.

37. Pay Tel doubles down on its arguments, asserting (b) (7)

¹³⁸ As the Commission noted in the *2024 IPCS Order*, we find this result much more likely to reflect accounting practices (b) (7). See *2024 IPCS Order* at 111, para. 199; *id.*, Appx. F at 394-95, paras. 20-21. (b) (7) See *id.*, Appx. F at 394, Tbl. 9.

¹³⁹ Wood Decl. paras. 7-8; see also Pay Tel Stay Petition at 22; *But see 2024 IPCS Order*, Appx. F at 392, Tbl. 7 (citing Pay Tel's IPCS Ancillary Revenue as (b) (7)).

¹⁴⁰ *Securus Stay Denial Order* at para. 32 (citing *2024 IPCS Order* at 68-75, paras. 130-37 (describing providers' ancillary services costs as being included in the rate cap calculations)).

¹⁴¹ See *2024 IPCS Order* at 220-29, paras. 408-26; *Securus Stay Denial Order* at 13, para. 32; see also Public Interest Parties Opposition at 9 ("[A]s the Bureau observed in the context of Securus's petition, alleged losses in connection with the prohibition on separate ancillary fees [are] misleading because 'in the long term, the Commission's IPCS rate caps allow providers to recover all ancillary service charges costs as part of their per-minute charges'" (quoting *Securus Stay Denial Order* at 15, para. 32)). For reference, Pay Tel's average ancillary expenses per audio minute are (b) (7). See *2024 IPCS Order*, Appx. F at 398, Tbl. 1).

¹⁴² All of Pay Tel's existing rates lie well-above the new rate caps, affording them significant margin to offset these purported losses. Specifically, Pay Tel charges audio IPCS rates that are, on average, above the respective rate cap by (b) (7)

(b) (7). Compare *2024 IPCS Order*,

Appx. F at 393, Tbl. 8 with *id.* at 115, para. 207.

¹⁴³ Our review of Pay Tel's data shows that Pay Tel's average site commissions per audio and video minute is (b) (7), ranging between (b) (7)

(b) (7), i.e., amounts generally equivalent to, or substantially less than, the corresponding margin between Pay Tel's current rates and the new rate caps. *2024 IPCS Order*, Appx. F at 401, Tbl. 14; *supra* note 142.

{}¹⁴⁴ We are unpersuaded. Pay Tel's own data show {}
 {} IPCS {} {}¹⁴⁵ Further, as explained in the *2024 IPCS Order*, other providers reported substantially lower per minute costs, including like-sized providers serving smaller facilities; this in turn suggests that Pay Tel may well be able to match the efficiency of its rivals.¹⁴⁶ Pay Tel previously raised such claims;¹⁴⁷ the Commission rejected those claims in the *2024 IPCS Order*, and we do so again now.¹⁴⁸

38. In short, Pay Tel fails to account for the offsetting revenue that we expect lower rates will produce, ignores the windfalls it may reap by charging above-cost rates in the period before it must comply with the new rate caps, and claims commercial viability concerns which fall flat compared to similarly-situated providers, and alongside the IPCS {}

{}). Based on the foregoing, we therefore conclude that Pay Tel has failed to demonstrate any imminent, actual irreparable harm resulting from the *Order*.¹⁴⁹

C. Pay Tel Has Not Shown That a Stay Is in the Public Interest and Would Not Harm Other Parties

39. We next conclude that 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 objectives mandated by the Martha Wright-Reed Act and necessary to protect consumers.

40. Pay Tel's primary argument that granting a stay would benefit the public interest is that the reforms adopted in the *2024 IPCS Order* will "pric[e] out IPCS providers, particularly in jails," leading to IPCS services becoming unavailable or less available in certain facilities.¹⁵⁰ As discussed

¹⁴⁴ Pay Tel Stay Petition at 22. Pay Tel argues further that the {}

{} *Id.* at 22 (citing *2024 IPCS Order* at 120-21, para. 217); see also *id.* at 8-9, n.34 (arguing that "any assumptions about call stimulation resulting from lower rates are not appropriate"). Pay Tel bases this argument on speculation that facilities will restrict access to IPCS in light of the reforms adopted in the *Order*, which we find unpersuasive. See *infra* para. 41 & n.155. Because Pay Tel offers no further rationale for why the Commission's estimates of future demand are inappropriate within the broader analysis of providers' future net losses (or gains) under the rate caps, we find such arguments meritless. Indeed, in its *ex parte* filings, Pay Tel neither disputed nor refuted these estimates. See generally Pay Tel July 9, 2024 *Ex Parte*, see also *2024 IPCS Order* at 301, para. 581 (adopting the same demand elasticity figure as that adopted in the *2021 ICS Order*, and observing that "[n]o commenter disputed our elasticity estimate or the methodology underlying it").

¹⁴⁵ See *2024 IPCS Order*, Appx. F at 394, Tbl. 9 (reflecting a {} {})
 But see *supra* n.138. Our estimate of Pay Tel's net returns for IPCS under the new rate caps is derived from the same data, and thus relies on the same underlying accounting practices, which Pay Tel reported {}
 {}, see *supra* para. 35 & n.138). We therefore think it remains likely,
 for the same reasons, that Pay Tel would {} {}

¹⁴⁶ See *2024 IPCS Order*, Appx. J at 453-44, para. 5.

¹⁴⁷ See, e.g., Pay Tel July 9, 2024 *Ex Parte* at 2 (arguing service at high cost facilities will be chilled).

¹⁴⁸ *2024 IPCS Order* Appx. J at 453-56, paras. 6-7 & nn.7, 14 (concluding that "it is implausible that our rate caps will prevent supply in small jails").

¹⁴⁹ See Public Interest Parties Opposition at 9 ("It is blackletter law that economic loss ordinarily 'does not, in and of itself, constitute irreparable harm.' . . . Here, Pay Tel does not demonstrate that the various types of financial losses it claims it would suffer under the MWRA Order is unrecoverable." (quoting *In re NTE Comm., LLC*, 26 F.4th 980, 990-91 (D.C. Cir. 2022))).

¹⁵⁰ Pay Tel Stay Petition at 23-24; see Wood Decl. at paras. 20-22. The *2024 IPCS Order* addressed and rejected similar claims. See *2024 IPCS Order*, Appx. J at 454-55, para. 6 ("Contrary to some claims, which argue that our rate caps impact smaller providers and thus smaller facilities, provider size is no predictor of the choice to serve very
 (continued . . .)

above, however, Pay Tel ignores the Commission's conclusion that its estimates of providers' average costs were "likely overstated," making it "unlikely that any provider will be unable to recover its individual average costs."¹⁵¹ Pay Tel similarly fails to account for the Commission's conclusion that, even when applying these overstated estimates, the rate cap structure adopted in the *2024 IPCS Order* will allow adequate cost recovery for providers representing "96 percent of [average daily population], and 96 percent of billed and unbilled minutes in the dataset."¹⁵² Consequently, Pay Tel falls far short of establishing that, let alone the extent to which, IPCS services may become unavailable in certain facilities.¹⁵³

41. Pay Tel further argues that because the Commission excluded the costs of certain safety and security measures from its rate cap calculations, these measures may be curtailed or eliminated, thereby harming incarcerated people, their families, and the general public due to the potential for increased crime and fraud.¹⁵⁴ Pay Tel also claims that the *2024 IPCS Order* may drive facilities to restrict access to IPCS.¹⁵⁵ As we observed in the *Securus Stay Denial Order*, the Commission "found similar concerns raised in the record to be generally unsupported"; and like Securus, Pay Tel "offers no further

small jails. As illustrated in Table 4, all eight of the providers discussed above serve very small jails. {[

]} Thus, it is implausible that our caps will prevent supply in small jails."}

¹⁵¹ *2024 IPCS Order* at 120, para. 216 n.765; see also *id.* at 120-21, para. 217 (noting that providers' average per-minute costs are likely to diminish due to, e.g., increased communications volumes and investment into video IPCS services). We separately reject Pay Tel's arguments regarding the Commission's analysis of projected revenues under the rate caps. See Appx. A; *supra* note 144.

¹⁵² *2024 IPCS Order* at 120, para. 216. Pay Tel observes that these providers reported per-minute costs above the rate caps for some of the facilities they serve. See Pay Tel Stay Petition at 9; Wood Decl. at para. 21. However, Pay Tel fails to acknowledge, for example, that many of these individual facilities may be grouped into contracts with other facilities in a manner that should, in the aggregate, allow for the providers to recover the total costs under each contract; or that the total costs attributed to any particular facility may be an artifact of the cost allocation process, rather than a precise estimate of the costs of serving that facility. See, e.g., ViaPath Comments, WC Docket Nos. 23-62 and 12-375, at 5 (filed June 2, 2023) ("[N]ot all IPCS providers track costs at the facility level in the normal course of business."); Securus Reply, WC Docket Nos. 23-62 and 12-375, at 16 (filed July 12, 2023) ("[C]ost allocations tend to produce more reliable results across entire datasets than for individual facilities whose costs may reflect differing requirements set by the correctional authority. Moreover, for multi-facility contracts, providers may rely on the overall costs and revenues for all facilities regardless of the particular cost and revenue ratio at any particular facility."); *2024 IPCS Order*, Appx. E at 379-80, paras. 5-6; *id.*, Appx. G at 408, para. 6 ("[T]he [least absolute shrinkage and selection operator (Lasso)] results confirm that there are certain data deficiencies at the facility-level, likely due to differences in cost allocation approaches across providers as well as instances of cost misallocation," which "create outlier facility cost observations."). Similarly, Pay Tel inflates its estimate of facilities where IPCS will become unavailable by assuming, in circumstances where a given provider might stop serving certain facilities or even exit the market outright, that other providers (who may operate more efficiently, i.e., at lower average costs) will not take over service at the facilities served by that provider. See Pay Tel Stay Petition at 8; Wood Decl. at para. 20; see also *2024 IPCS Order*, Appx. J at 453-56, paras. 5-7.

¹⁵³ For similar reasons, we are unpersuaded by Pay Tel's argument that "[p]ricing out IPCS providers will also harm incarcerated persons and their families through further constriction of the IPCS market." Pay Tel Stay Petition at 24. Additionally, the Commission considered, and rejected, such arguments in the *2024 IPCS Order*. See *2024 IPCS Order*, Appx. J at 455, para. 7 ("Competition should not be mistaken for the number of competitors."); see also Public Interest Parties Opposition at 10-11 ("Pay Tel provides no evidence that these outcomes are likely. To the contrary . . . the Commission has comprehensively demonstrated that the new rate caps would ensure fair compensation of providers. . . . To the extent that not being able to charge exploitative rates would cause a provider to exit the market and let a more efficient provider enter, that is an outcome consistent with Congress's intent under the [Martha Wright-Reed] Act.").

¹⁵⁴ See Pay Tel Stay Petition at 24-25.

¹⁵⁵ See *id.* at 25.

substantiation for such claims.”¹⁵⁶ Nevertheless, the *2024 IPCS Order* explicitly accounts for these theorized harms by extending the transition deadlines for the new rate cap and site commission rules, which Pay Tel fails to acknowledge.¹⁵⁷

42. 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.¹⁵⁸ 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 that also inure to the public’s benefit.¹⁵⁹ For example, and as the Commission observed in the *2024 IPCS Order*, consumers stand to gain from the elimination of ancillary service charges, which are a source of consumer confusion and detrimental provider practices.¹⁶⁰ 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,¹⁶¹ particularly when Congress expressly directed the Commission to

¹⁵⁶ See *Securus Stay Denial Order* at 18, para. 39; *2024 IPCS Order* at 166-67, 209, 307-08, paras. 311-12, 390 n.1399, 594; *id.*, Appx. J at 455-56, para. 7; see also Public Interest Parties Opposition at 11-12 (“Pay Tel provides no evidence that these outcomes are likely. . . . [N]othing in the [2024 IPCS Order] prevents facilities from offering the safety and security features they see fit.”).

¹⁵⁷ See *Securus Stay Denial Order* at 18; *2024 IPCS Order* at 304-08, paras. 587-94. Pay Tel raises a further concern identical to one raised by Securus, regarding the fact that “many [incarcerated people] will not see the benefits from the rate caps until 2026,” while at the same time those people “will lose out on the updated communications platforms and offerings” that Pay Tel is allegedly stymied from offering due to requirements that apply before 2026. Pay Tel Stay Petition at 25. We are similarly unpersuaded by this argument. See *Securus Stay Denial Order* at 18, paras. 39-40 & n.156.

¹⁵⁸ Pay Tel contends that “the public does not have a legally cognizable interest in the [2024 IPCS Order] taking effect before a court determines whether the Commission exceeded its legal authority.” Pay Tel Stay Petition at 23 (citing *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022), for the proposition that the “public’s true interest lies in the correct application of the law”). This argument misconstrues and misapplies the relevant discussion in *Biden*, which itself addressed several elements suggesting that the government’s action in question was in the public interest. *Biden*, 23 F.4th at 612. In any case, the cited principle from *Biden* turns the focus to the likelihood of success on the merits, which as addressed above, Pay Tel has failed to establish. See, e.g., *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006); *Congregation Lubavitch v. City of Cincinnati*, 923 F.2d 458, 460 (6th Cir. 1991).

¹⁵⁹ See, e.g., *2024 IPCS Order* 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 Commission’s IPCS reforms); Public Interest Parties Opposition at 8 (arguing that Pay Tel’s stay request is overbroad, as the *2024 IPCS Order* “adopts reforms on a number of other important issues, which Pay Tel’s Stay Request does not address”); *id.* at 10 (“[D]elaying the implementation of the [2024 IPCS Order] would cause significant financial and other harms to incarcerated people and their families that have been subject to unreasonable and predatory prices for too long” and “would add millions of dollars of financial burden for these communities each year”).

¹⁶⁰ See *2024 IPCS Order*, at 224-26, 227-29, paras. 418-19, 421-26.

¹⁶¹ 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 “deprive many incarcerated people of the regular contact with their families and communities that is essential to their health and wellbeing, as well as their access to legal representation.” Public Interest Parties Opposition at 10-11; see also Public Interest Parties Opposition to Securus Stay Petition at 9-10 (“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]. Such delay would prevent many incarcerated people from the health, safety, and wellbeing benefits that reliable communications with their loved ones could bring.”); Opposition of Stephen A. Raher to Securus Technologies’
(continued....)

enact regulations to implement the Martha Wright-Reed Act within 24 months from the statute's enactment.¹⁶²

43. For all these reasons, we find that Pay Tel has not shown that a stay is in the public interest and would not harm other parties.

IV. ORDERING CLAUSES

44. 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.

45. IT IS FURTHER ORDERED, that Pay Tel Communications Inc.'s Petition for Stay Pending Judicial Review of the Report and Order, filed October 7, 2024, in WC Docket Nos. 23-62 and 12-375, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (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").

¹⁶² See Public Interest Parties Opposition at 11 ("Staying the [2024 IPCS Order] would also frustrate Congress's express directive that regulations implementing the [Martha Wright-Reed] Act be timely promulgated and effectuated to afford incarcerated people and their families much-needed relief.").

APPENDIX A

Estimate of the Impact of Demand Elasticity on Pay Tel's Audio IPCS Revenues Under the Commission's New Rate Caps

1. In the *2021 ICS Order*, the Commission concluded based on evidence in the record that inmate calling services were subject to demand elasticity—i.e., that decreases in prices for inmate calling services would lead to increased demand for those services.¹ The Commission continued to rely on its prior conclusion that incarcerated people's communications services were subject to demand elasticity in the *2024 IPCS Order*.² Utilizing this conclusion in our analysis of the claims of harm Pay Tel makes in its petition for stay, we anticipate that the reduction in per-minute rates across rate cap tiers for Pay Tel's facilities will lead to increased minutes of use for audio communications and consequently increased audio IPCS revenues, which will largely offset reductions in audio IPCS revenues arising from the Commission's lower rates.

2. To assess the stimulative effects of the Commission's rate caps on Pay Tel's audio IPCS revenues, we compare Pay Tel's 2022 audio revenues net of site commissions to the lower revenues we would expect Pay Tel to collect under the new rate cap regime, which likely will be largely offset by an increase in demand induced by lower prices. This offsetting occurs for two reasons: the bulk of the price declines under the *2024 IPCS Order* come from the elimination of site commissions, which lowers prices without impacting providers' revenues; and this large drop in prices generates a large increase in demand.

3. *Pay Tel's 2022 Audio IPCS Revenues.* We first calculate Pay Tel's 2022 audio IPCS revenues. In 2022, Pay Tel's audio IPCS revenues, inclusive of site commissions, were approximately {{ }}.³ To determine Pay Tel's audio IPCS revenues net of site commission payments, we calculate and then deduct the amount of audio IPCS revenues related to site commission payments. Pay Tel paid a total of approximately {{ }} in IPCS site commissions to correctional facilities in 2022.⁴ We allocate approximately {{ }} in site commission revenues to Pay Tel audio IPCS, given that audio IPCS revenues account for about {{ }} of Pay Tel's total audio and video IPCS revenue.⁵ Thus, we estimate that Pay Tel retained audio revenues of approximately {{ }} in 2022.

4. *Pay Tel's Estimated Audio IPCS Revenues Under the New Rate Caps.* Next, we calculate Pay Tel's audio IPCS revenues under the new rate caps, by reducing Pay Tel per-minute audio rates to the audio rate caps for each rate cap tier, multiplying those rates by total Pay Tel audio minutes in each tier, and summing across tiers. This results in total Pay Tel audio IPCS revenues under the new caps of approximately {{ }}, which represents a roughly {{ }} in audio revenues exclusive of site commissions at 2022 demand levels.

5. *Impact of Demand Elasticity on Pay Tel's Audio IPCS Revenues.* As the Commission concluded in the *2024 IPCS Order*, lower IPCS rates will predictably stimulate demand. To estimate the amount of that increase, we use an elasticity of demand for audio IPCS of 0.3 determined by the Commission and apply it to the percent decrease of Pay Tel's rates under the new rate caps.⁶ We calculate an average percentage {{ }}

¹ *2024 IPCS Order* at 301, para. 581.

² *Id.*

³ *Id.*, Appx. F at 392, Tbl. 7.

⁴ *Id.*, Appx. F at 386, Tbl. 3.

⁵ *See id.*

⁶ *Id.* at 301, para. 581.

}}, which is due in large part to the elimination of site commission payments. Using an elasticity of demand of 0.3, we estimate that this reduction in rates leads to about a {[]} increase in minutes of use and a concurrent increase in audio revenues of about {[]}. This expansion of expected revenues from increased demand for audio IPCS communications largely offsets the reduction in Pay Tel's audio revenues net of site commissions {[]}.

6. *Video IPCS Revenues.* While we are unable to perform a similar calculation for estimating the increased revenues Pay Tel would obtain given the increase in demand for video IPCS that will result from the new lower video IPCS rate caps, Pay Tel would undoubtedly benefit from additional revenues that would further offset the reductions in revenue it claims it would experience under the new rate caps.



PUBLIC NOTICE

Federal Communications Commission
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DA: 24-1075

Released: October 18, 2024

ENFORCEMENT BUREAU CONTINUES 2024 EEO AUDITS

On October 18, 2024, the Enforcement Bureau issued the second of its Equal Employment Opportunity (EEO) audit letters for 2024 to randomly selected radio and television stations. In accordance with section 73.2080(f)(4) of the Commission's EEO rules,¹ the Enforcement Bureau annually audits the EEO programs of randomly selected broadcast licensees. Each year, approximately five percent of all radio and television stations are selected for EEO audits.

A list of the radio and television stations included in this audit as well as the text of the October 18, 2024 audit letter appears on the following pages, which are also located at the Enforcement Bureau's EEO headline page on the FCC website at: <https://www.fcc.gov/enforcement/eb-eo/equal-employment-opportunity-headlines>. The deadline for stations to upload responses to their FCC-hosted online public inspection files is December 2, 2024. Stations in the states of Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia impacted by the disruption caused by Hurricanes Helene or Milton do not need to request an extension, and may respond by January 16, 2025, if they find the additional time necessary. In addition, stations in the impacted areas may contact the Enforcement Bureau to discuss options if unique circumstances prevent them from responding to their audits by this extended deadline.

As a reminder, the Enforcement Bureau will no longer issue letters to licensees upon completion of our review of audit responses.² If questions arise during staff review, the Enforcement Bureau will contact the licensee.

For further information, please contact the Enforcement Bureau at EB-EEO@fcc.gov or 202-418-1450.

- FCC -

¹ 47 CFR § 73.2080(f)(4).

² On March 22, 2024, the Enforcement Bureau sent the first broadcast EEO audit letters for 2024. *See Enforcement Bureau Commences 2024 Broadcast EEO Audits*, Public Notice, 2024 WL 1270129 (EB 2024).



Federal Communications Commission
Washington, D.C. 20554

October 18, 2024

Attention Licensee:

1. In accordance with 47 CFR § 73.2080(f)(4), [Station call sign] (the Station) and all other stations, if any, in the same station employment unit (defined by 73.2080(e)(2) as commonly owned stations in the same market that share employees) (the Unit) has been randomly selected for an audit of its Equal Employment Opportunity (EEO) program. A copy of section 73.2080 of the Federal Communications Commission (FCC or Commission) rules can be found here: <https://www.fcc.gov/enforcement/eb-eeo/equal-employment-opportunity-rules>.

2. Audit Data Requested.

(a) If the Unit has fewer than five full-time employees (defined by section 73.2080(e)(1) as employees regularly assigned to work 30 hours a week or more), submit a response listing the Unit's full-time employees identified by job title (no personal names should be provided), the number of hours each is regularly assigned to work per week, and a response to paragraph 2(b)(vi) below. Please also see paragraphs 3 and 4 below for guidance regarding brokers and brokered stations.

(b) If the Unit employs five or more full-time employees, provide the following information:

(i) Copies of the Unit's two most recent EEO Public File Reports, described in section 73.2080(c)(6).

(ii) For each station in the Unit that maintains a website, the website address. If the Unit's most recent EEO Public File Report is not posted on each website as required by section 73.2080(c)(6), identify that website and explain why the report is not so posted. If the Unit does not maintain a website, but its corporate site contains a link to a site pertaining to the Unit, identify the corporate website address where the Unit's most recent EEO Public File Report is linked pursuant to section 73.2080(c)(6).

(iii) For each of the Unit's full-time positions filled during the period covered by the EEO Public File Reports noted above, or since acquisition of the Unit (if during that period), the date of hire as required by section 73.2080(c)(5)(vi) as well as dated copies of all advertisements, bulletins, letters, faxes, e-mails or other communications announcing the position, as described in section 73.2080(c)(5)(iii). However, to reduce the burden of responding to this audit, if a job notice was sent to multiple sources, the Unit may include in its response: (1) documentation showing one such notice was sent, (2) a list of the additional sources to which the notice was distributed, and (3) a statement confirming notices to all additional sources used to announce the vacancy were retained, as required by section 73.2080(c)(5)(iii).¹ Include, however, copies of all job announcements sent to any organization (identified separately from other recruitment sources) that has notified the Unit that it wants to be notified of the Unit's job openings, as described in section 73.2080(c)(1)(ii).

¹ For on-air announcements that aired multiple times to advertise the position, you may send a traffic log summary documenting the timeframe during which the announcements aired (in lieu of the log in its entirety). The log showing all air dates and times may be required for additional verification, but the Unit need not provide with its initial response.

(iv) As required by section 73.2080(c)(5)(v), the total number of interviewees for each vacancy and the referral source for each interviewee for all the Unit's full-time vacancies filled during the period covered by the above-noted EEO Public File Reports.

(v) Dated documentation demonstrating performance of the Unit's recruitment initiatives described in section 73.2080(c)(2) during the period covered by the above-noted EEO Public File Reports, such as participation in job fairs, events with educational institutions, and mentoring or training programs for staff. Specify the Unit personnel involved in each recruitment initiative. In addition, provide the Unit's total number of full-time employees and state whether the population of the market in which any of the Unit's stations operates is 250,000 or more. Based upon these two factors and as required by sections 73.2080(c)(2) and (e)(3) of the Commission's rules, state whether the Unit is required to perform two or four points worth of initiative activities within a two-year period (measured from the date the stations in the Unit file their renewal applications and the second, fourth, sixth and eighth anniversaries of that date). If the Unit performed more than the required number of initiative activities, it may provide documentation for only the required amount in its response, i.e., two or four points worth. If any documentation provided appears inadequate, e.g., it is not dated or does not clearly prove the Unit's participation, the Commission may ask for additional verification.

(vi) Any pending or resolved complaints involving the Unit filed during the Unit's current license term(s) before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the Unit on the basis of race, color, religion, national origin, or sex. For each such complaint, provide: (1) a brief description of the complaint(s); (2) the persons involved; (3) the date the complaint was filed; (4) the court or agency before which it is pending or by which it was resolved; (5) the file or case number; and (6) the disposition and date thereof or current status. Note that the Unit must report all complaints, regardless of their status or disposition.

(vii) In accordance with section 73.2080(b), during the Unit's current license term(s) (or since acquisition of the Unit (if during that period)), a description of the responsibilities of each level of Unit management responsible for implementing Unit EEO policies and how the Unit has informed employees and job applicants of its EEO policies and program.

(viii) In accordance with section 73.2080(c)(3), during the Unit's current license term(s) (or since acquisition of the Unit (if during that period)), a description of the Unit's efforts to analyze its EEO recruitment program to ensure that it is effective and to address any problems found as a result of such analysis.

(ix) As required by section 73.2080(c)(4), during the Unit's current license term(s) (or since acquisition of the Unit (if during that period)), a description of the Unit's efforts to analyze periodically its measures taken to examine pay, benefits, seniority practices, promotions, and selection techniques and tests to ensure that they provide equal opportunity and do not have a discriminatory effect. If the Unit has one or more union agreements, describe how the Unit cooperates with each union to ensure EEO policies are followed for the Unit's union-member employees and job applicants.

(x) If your entity is a religious broadcaster and any of the Unit's full-time employees are subject to a religious qualification as described in section 73.2080(a) of the rules, the Unit should indicate that status in its response and provide data as applicable to its EEO program. For example, for those full-time hires subject to a religious qualification, you must provide only a record of the hire listed by job title and date filled, the recruitment sources used for the opening, and the source

that referred the person hired. No other records are required for those hires. If five or more full-time positions are not subject to a religious qualification, the licensee must maintain and provide all records for such hires and complete the initiatives required under section 73.2080(c)(2).

Otherwise, a religious broadcaster is not required to perform these initiatives.

(c) Resumes, company training manuals, posters, employee handbooks, and corporate guidebooks are not required to be submitted. If any of the information in these or similar materials is relevant to any part of this audit letter, the Unit may provide a summary of any content if it so wishes. If this audit requires an unusually burdensome volume of documentation, the Unit may contact EEO staff at (202) 418-1450 prior to the response deadline to discuss alternative ways of condensing the information.

3. Time Brokerage—Licensee of brokered station(s) receives audit letter.

If any station included in the Unit is subject to a time brokerage agreement, the licensee must immediately forward a copy of this letter to the broker under each such agreement. Additionally, if the Unit employs fewer than five full-time employees, the licensee must respond by providing a list of the Unit's full-time employees listed by job title, the number of hours each employee is assigned to work, and a response to paragraph 2(b)(vi) above. If the Unit employs five or more full-time employees, the licensee must respond fully to paragraph 2(b).

4. Time Brokerage—Broker receives audit letter.

(a) **Broker receives audit letter from brokered station licensee.** The broker must submit information requested in paragraph 2(b) above concerning information relating only to its own full-time employees working on behalf of the brokered station, as required by section 73.2080(f)(3) of the Commission's rules. If recruitment activity for those brokered station employees is maintained with that of other stations licensed to you, and you lack the ability to separate the information, submit information pertaining to both.

(b) **Broker receives audit letter directly from Commission.** If any station in the Unit is licensed to you, submit information requested in paragraph 2(b) above for the Unit's EEO program. If recruitment activity pertaining to full-time employees working on behalf of another station you broker is maintained with that of the Unit, and you lack the ability to separate the information, submit information pertaining to both.

(c) **Broker described in 4(a) or 4(b).** If full-time employees at the station you broker, combined with full-time employees at the Station (or Unit), total fewer than five, you need only respond to this letter by submitting a list of full-time employees (identified by job title and number of hours regularly assigned to work per week) for both the brokered station(s) and subject Station as well as a response to paragraph 2(b)(vi).

5. Procedures.

(a) As required by sections 73.3526(e)(10) (commercial stations) and 73.3527(e)(11) (noncommercial educational stations), a copy of this letter and the response must be placed in the FCC-hosted online public inspection file (<https://publicfiles.fcc.gov/>) belonging to each station in the Unit. The response should be placed in the EEO Audits, Investigations, and Complaints subfolder in the online public file (found at EEO Records>>Additional Documents>> EEO Audits, Investigations, and Complaints) by **no later than December 2, 2024**. Include in the response the Station's Facility ID Number and an e-mail address of a Station representative.

(b) Any extension of time must be requested at least five days prior to aforementioned deadline (via email to EB-EEO@fcc.gov), indicate the additional time the Unit believes it needs to complete its response (not to exceed 45 days) and will be granted only upon a showing of good cause. Unless and until an extension is granted, the original deadline remains in effect. Stations in the states of Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia impacted by the disruption caused by Hurricanes Helene or Milton do not need to request an extension, and may respond by January 16, 2025, if they find the additional time necessary. In addition, stations in the impacted areas may contact the Enforcement Bureau to discuss options if unique circumstances prevent them from responding to their audits by this extended deadline.²

(c) If the Unit submitted an EEO audit response in 2022 or 2023 and/or the most recent license renewal application(s) applicable to the Unit were granted after October 1, 2022, send an email to EB-EEO@fcc.gov for additional guidance on whether a response is required. In the email, provide a reference to the relevant filings/applications before the Commission.

(d) The accuracy and completeness of the response must be certified by an officer, partner or other principal of the Station licensee or broker (as appropriate) or, in the case of a noncommercial educational station, by an officer, member or other principal of the licensee. (*See* 47 CFR § 1.16). To knowingly and willfully make any false statement or conceal any material fact in response to this audit is punishable by fine or imprisonment (*see* 18 U.S.C. § 1001; 47 CFR § 1.17), revocation of any station license or construction permit (47 U.S.C. § 312(a)(1)), and/or forfeiture (47 U.S.C. § 503). Failure to respond to this audit letter by the deadline is punishable by sanctions in accordance with section 73.2080(g).

(e) Upon receipt, audit responses will be reviewed for completeness. If any questions arise or there are missing materials, EEO staff will contact you. The Enforcement Bureau no longer issues letters to licensees upon completion of our review of audit responses.

6. Should you have any questions about your response, please contact EEO staff of the Investigations & Hearings Division in the Commission's Enforcement Bureau at EB-EEO@fcc.gov or (202) 418-1450 at least five business days prior to the December 2, 2024 response deadline. Thank you for your cooperation.

² Any waiver request will be forwarded to Media Bureau for consideration.

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
1.	KAML-FM	FM	24211	GILLETTE	WY	Legend Communications of Wyoming, LLC
2.	KAMZ	FM	77643	TAHOKA	TX	Christina Benavides
3.	KASN	DTV	41212	PINE BLUFF	AR	Mission Broadcasting, Inc.
4.	KBHR	FM	51566	BIG BEAR CITY	CA	Parallel Broadcasting, Inc.
5.	KBIM	AM	34871	ROSWELL	NM	Noalmark Broadcasting Corp
6.	KBQC	FM	92243	INDEPENDENCE	KS	AMERICAN FAMILY ASSOCIATION
7.	KCKC	FM	11279	KANSAS CITY	MO	MGTF Media Company, LLC
8.	KCOG	AM	33736	CENTERVILLE	IA	KCOG, Inc.
9.	KCOQ	FM	88360	STEAMBOAT SPRINGS	CO	Radio Partners LLC
10.	KDJW	AM	31462	AMARILLO	TX	La Promesa Foundation
11.	KETG	TV	2768	Arkadelphia	AR	Arkansas Educational Television Commission
12.	KEVK-FM	FM	198750	SANDERSON	TX	Mekaddesh Group Corporation
13.	KEZZ	FM	165959	PHIPPSBURG	CO	Blizzard Broadcasting II Colorado, LLC
14.	KFHM	FM	175096	BIG BEAR CITY	CA	Advance Ministries, Inc.
15.	KFTG	FM	12969	PASADENA	TX	Aleluya Broadcasting Network
16.	KGBX-FM	FM	63887	NIXA	MO	IHM LICENSES, LLC
17.	KGHT	FM	162386	EL JEBEL	CO	Roaring Fork Broadcasting Company LLC
18.	KGLL	FM	122432	GILLETTE	WY	Real Presence Radio
19.	KHBS	DTV	60353	FORT SMITH	AR	Arkansas Hearst Television Inc.
20.	KHPS	FM	173349	UVALDE	TX	Houston Christian Broadcasters, Inc.
21.	KHVT	FM	89111	BLOOMINGTON	TX	Houston Christian Broadcasters, Inc.
22.	KIOW	FM	52609	FOREST CITY	IA	Pilot Knob Broadcasting, Inc.
23.	KJCC	FM	122517	CARNEGIE	OK	CSN INTERNATIONAL
24.	KJIC	FM	12972	SANTA FE	TX	Community Radio, Inc.
25.	KKBI	FM	8782	BROKEN BOW	OK	JL Radio LLC
26.	KKBZ	FM	38455	AUBERRY	CA	Lotus Fresno Corp.
27.	KKDC	FM	88574	DOLORES	CO	Four Corners Broadcasting LLC

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
28.	KKHK	FM	29337	CARMEL	CA	SMG-Monterey, LLC
29.	KKVR	FM	164166	KERRVILLE	TX	Radio Ranch, LLC
30.	KLAV	AM	70690	LAS VEGAS	NV	Lotus Broadcasting Corp
31.	KLFG	FM	92486	FORT DODGE	IA	Educational Media Foundation
32.	KLRV	FM	91499	BILLINGS	MT	Educational Media Foundation
33.	KLVR	FM	18801	MIDDLETOWN	CA	Educational Media Foundation
34.	KMWA	FM	70705	EDINA	MN	Educational Media Foundation
35.	KNEB	AM	51463	SCOTTSBLUFF	NE	Nebraska Rural Radio Association
36.	KNSB	FM	83540	BETTENDORF	IA	Iowa Public Radio, Inc.
37.	KOAS	FM	25692	DOLAN SPRINGS	AZ	BEASLEY MEDIA GROUP LICENSES, LLC
38.	KORT	AM	138	GRANGEVILLE	ID	Nelly Broadcasting Idaho, LLC
39.	KPCS	FM	93446	PRINCETON	MN	Pensacola Christian College, Inc.
40.	KPMB	FM	88451	PLAINVIEW	TX	CENTRO CRISTIANO DE VIDA ETERNA
41.	KPNY	FM	25879	ALLIANCE	NE	My Bridge
42.	KRPB	FM	166065	MORRISTOWN	AZ	Jeff Chang
43.	KRVY-FM	FM	31059	STARBUCK	MN	Iowa City Broadcasting Company, Inc.
44.	KSGR	FM	81512	PORTLAND	TX	CALVARY CHAPEL OF THE COASTLANDS, INC.
45.	KSIF	FM	171701	WELLINGTON	TX	LA PROMESA FOUNDATION
46.	KSTP-FM	FM	35642	ST. PAUL	MN	KSTP-FM FCC License Sub, LLC
47.	KTAM	AM	62002	BRYAN	TX	Brazos Valley Communications, Ltd.
48.	KTLC	FM	88201	CANON CITY	CO	Educational Communications of Colorado Springs Inc
49.	KTSG	FM	88717	STEAMBOAT SPRINGS	CO	Educational Communications of Colorado Springs Inc
50.	KTVE	DTV	35692	EL DORADO	AR	Mission Broadcasting, Inc.
51.	KTYM	AM	67519	INGLEWOOD	CA	El Sembrador Ministries
52.	KUUZ	FM	15961	LAKE VILLAGE	AR	Family Worship Center Church, Inc.
53.	KVJM	FM	52835	HEARNE	TX	IHM LICENSES, LLC
54.	KWOG	DTV	67347	SPRINGDALE	AR	Word of God Fellowship, Inc.

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
55.	KWTD	FM	86917	RIDGECREST	CA	Westside Christian Fellowship A.V.
56.	KXZM	FM	4698	FELTON	CA	Lazer Licenses LLC
57.	KYHA	FM	762138	CLOVIS	NM	Bible Broadcasting Network, Inc.
58.	KYTM	FM	164271	CORRIGAN	TX	Family Worship Center Church, Inc.
59.	KZBV	FM	176698	CARMEL VALLEY	CA	Aware FM, Inc.
60.	KZWL	FM	170966	BULLARD	TX	Educational Radio Foundation of East Texas, Inc.
61.	WABM	DTV	16820	BIRMINGHAM	AL	Birmingham (WABM-TV) Licensee, Inc
62.	WAFN	AM	290	SOMERVILLE	AL	Fun Media Group of North Alabama, LLC
63.	WALS	FM	17316	OGLESBY	IL	Shaw Local Radio Co.
64.	WAMD	AM	39550	ABERDEEN	MD	Radio Broadcast Communications, Inc.
65.	WAQP	DTV	67792	SAGINAW	MI	Radiant Life Ministries, Inc.
66.	WAVQ	AM	161860	JACKSONVILLE	NC	Eastern Airwaves, LLC
67.	WAWV-TV	DTV	65247	TERRE HAUTE	IN	Mission Broadcasting, Inc.
68.	WBAF	AM	3973	BARNESVILLE	GA	Ploener Radio Group of Barnesville, LLC
69.	WBJV	FM	76930	STEUBENVILLE	OH	AMERICAN FAMILY ASSOCIATION
70.	WBKB-TV	DTV	67048	ALPENA	MI	Queen Bee's Knees LLC
71.	WCFJ	FM	17765	IRMO	SC	Radio Training Network Inc
72.	WCIA	DTV	42124	CHAMPAIGN	IL	Nexstar Broadcasting, Inc.
73.	WCIQ	DTV	711	MOUNT CHEAHA	AL	Alabama Educational Television Commission
74.	WCJB-TV	DTV	16993	GAINESVILLE	FL	Gray Television Licensee, LLC
75.	WCLN-FM	FM	60881	RENNERT	NC	Grander Vision Media, LLC
76.	WCPC	AM	71291	HOUSTON	MS	Cajun Radio Corporation
77.	WCTR	AM	34030	CHESTERTOWN	MD	Hometown Multimedia, LLC
78.	WCTV	DTV	31590	THOMASVILLE	GA	Gray Television Licensee, LLC
79.	WCUE	AM	20674	CUYAHOGA FALLS	OH	Family Stations, Inc.
80.	WCVN-TV	DTV	34204	COVINGTON	KY	Kentucky Authority for Educational Television
81.	WCWA	AM	19627	TOLEDO	OH	IHM LICENSES, LLC

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
82.	WDIV-TV	DTV	53114	DETROIT	MI	Graham Media Group, Michigan, Inc.
83.	WETP-TV	DTV	18252	SNEEDVILLE	TN	East Tennessee Public Communications Corporation
84.	WEVV-TV	DTV	72041	EVANSVILLE	IN	BCBE License Subsidiary, LLC
85.	WFFF-FM	FM	25817	COLUMBIA	MS	HADDOX ENTERPRISES, INC.
86.	WGEM-TV	DTV	54275	QUINCY	IL	Gray Television Licensee, LLC
87.	WGIQ	DTV	710	LOUISVILLE	AL	Alabama Educational Television Commission
88.	WGTE-TV	DTV	66285	TOLEDO	OH	Public Broadcasting Foundation of Northwest Ohio
89.	WHDH	DTV	83929	STUART	FL	Scripps Broadcasting Holdings, LLC
90.	WHFT-TV	DTV	67971	MIAMI	FL	Trinity Broadcasting of Florida, Inc.
91.	WHYY-FM	FM	66910	MONTGOMERY	AL	Cumulus Licensing LLC
92.	WHIQ	DTV	713	HUNTSVILLE	AL	Alabama Educational Television Commission
93.	WHLT	DTV	48668	HATTIESBURG	MS	Nexstar Inc.
94.	WHMC	DTV	61004	CONWAY	SC	South Carolina Educational Television Commission
95.	WIIQ	DTV	720	DEMOPOLIS	AL	Alabama Educational Television Commission
96.	WIRI	FM	85832	NEKOOSA	WI	Civic Media, Inc.
97.	WJBF	DTV	27140	AUGUSTA	GA	Nexstar Inc.
98.	WJBL	FM	21697	LADYSMITH	WI	Zoe Communications, Inc.
99.	WJHL-TV	DTV	57826	JOHNSON CITY	TN	Nexstar Broadcasting, Inc.
100.	WJKA	FM	87089	JACKSONVILLE	NC	AMERICAN FAMILY ASSOCIATION
101.	WJWZ	FM	70356	WETUMPKA	AL	Bluewater Broadcasting Company, LLC
102.	WKGC-FM	FM	25562	PANAMA CITY	FL	Gulf Coast State College
103.	WKJV	AM	2921	ASHEVILLE	NC	International Baptist Outreach Missions
104.	WKMA-TV	DTV	34212	MADISONVILLE	KY	Kentucky Authority for Educational Television
105.	WKOH	DTV	34205	OWENSBORO	KY	Kentucky Authority for Educational Television
106.	WKON	DTV	34211	OWENTON	KY	Kentucky Authority for Educational Television
107.	WKQX	FM	19525	Chicago	IL	Radio License Holdings LLC

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
108.	WKTC	DTV	40902	SUMTER	SC	WBHQ Columbia, LLC
109.	WKYT-TV	DTV	24914	LEXINGTON	KY	Gray Television Licensee, LLC
110.	WLFG	TV	37808	Grundy	VA	Living Faith Ministries Inc
111.	WLVN	FM	87534	GRENADA	MS	Educational Media Foundation
112.	WMIM	FM	37119	LUNA PIER	MI	Cumulus Licensing LLC
113.	WMKT	AM	215	CHARLEVOIX	MI	MacDonald Garber Broadcasting, Inc.
114.	WMLS	FM	92306	GRAND MARAIS	MN	Minnesota Public Radio
115.	WMOW	DTV	81503	CRANDON	WI	Wausau TV License Company, LLC
116.	WMPT	DTV	65942	ANNAPOLIS	MD	Maryland Public Broadcasting Commission
117.	WNEO	DTV	49439	ALLIANCE	OH	Northeastern Educational Television of Ohio, Inc.
118.	WNWO-TV	DTV	73354	TOLEDO	OH	WNWO Licensee, LLC
119.	WORO-DT	DTV	73901	FAJARDO	PR	Tele Oro Canal 13-Woro-DT Trust
120.	WPAK-FM	FM	191574	TIGERTON	WI	Multi-Cultural Diversity Radio, Inc.
121.	WPBK	FM	164242	CRAB ORCHARD	KY	Radioactive, LLC
122.	WPRP	AM	54475	PONCE	PR	ARSO Radio Corporation
123.	WPWX	FM	17304	HAMMOND	IN	Dontron, Inc.
124.	WPXC-TV	DTV	71236	BRUNSWICK	GA	ION Television License, LLC
125.	WPXX-TV	DTV	21726	MEMPHIS	TN	INYO Broadcast Licenses, LLC
126.	WQCD	AM	54557	DELAWARE	OH	Delmar Communications, Inc.
127.	WRDB	AM	59233	REEDSBURG	WI	Magnum Communications, Inc.
128.	WREG-TV	TV	66174	MEMPHIS	TN	Tribune Media Company
129.	WRIL	FM	52625	PINEVILLE	KY	Pine Hills Broadcasting, Inc.
130.	WRLK-TV	DTV	61013	COLUMBIA	SC	South Carolina Educational Television Commission
131.	WRLM	TV	43870	Canton	OH	Radiant Life Ministries, Inc.
132.	WSHP-FM	FM	73239	EASLEY	SC	Radio Training Network Inc
133.	WSIE	FM	6128	EDWARDSVILLE	IL	Board of Trustees, Southern Illinois University
134.	WSLN	DTV	776220	FREEPORT	IL	Gray Television Licensee, LLC

OCTOBER 18, 2024 BROADCAST EEO AUDIT
RADIO & TELEVISION STATIONS

	CALL SIGN	SERVICE	FACILITY ID	CITY OF LICENSE	STATE	LICENSEE NAME
135.	WSQL	AM	54616	BREVARD	NC	GoNuts Media, LLC
136.	WSYE	FM	48630	HOUSTON	MS	JMD, Inc.
137.	WTCI	DTV	65667	CHATTANOOGA	TN	The Greater Chattanooga Public Television Corp.
138.	WTCT	DTV	67786	MARION	IL	Radiant Life Ministries, Inc.
139.	WTGY	FM	10579	CHARLESTON	MS	Family Worship Center Church, Inc.
140.	WTIF-FM	FM	63841	OMEGA	GA	Journey Church of Tifton, Inc.
141.	WTWO	DTV	20426	TERRE HAUTE	IN	Nexstar Broadcasting, Inc.
142.	WVPX-TV	DTV	70491	AKRON	OH	INYO Broadcast Licenses, LLC
143.	WWQI	FM	172815	MORRISTOWN	IN	The Power Foundation
144.	WWTG	FM	93049	CARPENTERSVILLE	IL	Cary Grove Adventist Fellowship
145.	WXLI	AM	36722	DUBLIN	GA	Laurens County Broadcasting Co Inc
146.	WXMI	DTV	68433	GRAND RAPIDS	MI	Scripps Broadcasting Holdings, LLC
147.	WXRS	AM	36203	SWAINSBORO	GA	RadioJones, L.L.C.
148.	WYHI	FM	23476	PARK FOREST	IL	Bible Broadcasting Network, Inc.
149.	WYVK	FM	18022	MIDDLEPORT	OH	Total Media Group, Inc.
150.	WZKB	FM	31119	WALLACE	NC	Carolina's Christian Broadcasting Inc

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

In the Matter of	)	
	)	
KALO TV, INC.	)	Facility ID No. 51241
	)	NAL/Acct. No. 202441420017
Licensee of Station KALO	)	FRN: 0019041623
Honolulu, Hawaii	)	LMS File No. 0000201453
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 15, 2024

Released: October 15, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of KALO TV, Inc. (Licensee), for renewal of its license for KALO, Honolulu, Hawaii (Station). In this *Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly issues/programs lists in violation of section 73.3527(e)(8).² Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Section 73.3527(e)(8) of the Rules requires every noncommercial educational television licensee to place in its Online Public Inspection File (OPIF), on a quarterly basis, an issues/programs list that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.³ Issues/programs lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.⁴

3. On September 30, 2022, the Licensee filed its Application. A staff inspection of the Station's OPIF revealed that the Licensee failed to upload numerous copies of its issues/programs lists by the deadline established in section 73.3527(e)(8) of the Rules.⁵ Specifically, it uploaded 10 lists more than one year late, 11 lists between one month and one year late, and 2 lists between one day and one month late. In the Application, the Licensee stated that the manager of the Station through early 2019 "did not understand that the reports were due quarterly."⁶ Following a change in station management, the

¹ Application of KALO TV, Inc. for Renewal of License, LMS File No. 0000201453 (filed Sept. 30, 2022) (Application). KALO is a noncommercial educational television station.

² 47 CFR § 73.3527(e)(8).

³ *Id.*

⁴ *Id.*

⁵ *Id.* A Bureau staff inspection was consistent with the Licensee's disclosures in its Application.

⁶ Application at Attach., KALO Online Public Inspection File.

new “manager and the licensee, whose board members were quite inexperienced in broadcasting, were unaware of the need to prepare and post the issues/programs lists.”⁷

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), which states 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.⁸ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹²

5. *Apparent Violation.* In total, the Licensee failed to upload in a timely manner to the Station’s OPIF copies of the Station’s issues/programs lists for 23 quarters. These lists were uploaded between one day late and over one year late. We therefore find that the Licensee has apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Rules.¹³

6. *Proposed Forfeiture.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$10,000 for public file violations.¹⁴ 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,

⁷ *Id.* We granted an application for transfer of control of the license on December 12, 2017, which was consummated on February 7, 2018. See LMS File No. BTCEDT-20170707AAM. The Licensee described the transaction as a “major transfer of control.” Application at Attach., KALO Online Public Inspection File. To the extent that the Licensee’s statement is meant to imply that the transfer should cut off liability with regards to the late filings made prior to the date of transfer, we note that a transfer of control, where long-form or pro forma, does not extinguish liability so long as the licensee entity remains the same. The Commission has stated clearly that liability for violations of Commission rules inures to the licensee regardless of an intervening transfer of control. See e.g., *Winslow Communications, Inc.*, 45 FCC 2d 662 (1974) (rejecting licensee’s argument that it should not be liable for violation when violation occurred prior to transfer of control of licensee’s stock); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959, para. 3 (2001) (“The fact that the ownership of the company changed hands does not affect the company’s liability) *recon. dismissed EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15605 (2001).

⁸ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹² 47 U.S.C. § 312(f)(2).

¹³ See 47 CFR § 73.3526(e)(11)(i).

¹⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(11), Table 1.

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.”¹⁵

7. In this case, the Licensee failed to timely upload to its OPIF issue/programs lists for 23 quarters, including filing 10 reports over one year late, in violation of section 73.3527(e)(8) of the Rules.¹⁶ While the Licensee stated that its repeated failure to timely upload its issue/programs lists was because of a lack of knowledge and inexperience of its managers and Board members, we note that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations.”¹⁷ Further, ignorance of the law is not an excuse. All licensees are responsible for compliance with the Commission’s rules.¹⁸ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we find that under the facts of this case an upward adjustment from the base amount to twenty thousand dollars (\$20,000) is appropriate given the large number of issues/programs lists that were uploaded late during the license term and the extent by which they were filed late.¹⁹

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.²⁰ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”²²

9. We find that the Licensee’s apparent violation of section 73.3527(e)(8) of the Rules does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of

¹⁵ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(11); 47 CFR § 1.80(b), paragraph (b)(11), Table 3.

¹⁶ See 47 CFR § 73.3527(e)(8).

¹⁷ *Southern California*, 6 FCC Rcd at 4387, para. 3 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Comm’cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358, para. 4 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

¹⁸ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not ‘claim ignorance of the law as a defense’” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California* 6 FCC Rcd at 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal cites omitted).

¹⁹ See e.g., *Gray Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, DA 24-564 (rel. June 13, 2024) (proposing \$20,000 forfeiture for 23 late filed documents in the OPIF for station KCWY-DT) (paid June 18, 2024).

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

abuse.²³ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.²⁴

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that **KALO TV, Inc.**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of **twenty thousand dollars (\$20,000)** for its apparent willful and repeated violation of section 73.3527(e)(8) of the Commission's rules, 47 CFR § 73.3527(e)(8).

11. **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*, **KALO TV, Inc.**, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, KALO TV, Inc. must send notice that payment has been made to VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:²⁶

- 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).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

²³ For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁴ Our action today addresses known apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that are discovered or may occur following the adoption date of this item and prior to the grant of the current Application would be separate violations and potentially subject to additional Commission action.

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

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

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

- 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.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules, 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, Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to VideoNAL@fcc.gov to assist in processing the response.**

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications 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.²⁸
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

14. 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

²⁸ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

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.²⁹

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.³⁰ 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 VideoNAL@fcc.gov. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Malala Pau, Post Office Box 1256, Honolulu, Hawaii 96807, and by email to malala@KALOTV.COM. A copy will also be sent to Licensee's counsel Anne Goodwin Crump, Legal Representative, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street 11th Floor, Arlington, Virginia 22209, and by email to crump@fhhlaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁹ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

³⁰ See 47 CFR § 1.1914.



PUBLIC NOTICE

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DA 24-1077

Released: October 15, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES DAVIESS-MARTIN COUNTY RURAL TELEPHONE CORPORATION AND PINPOINT COMMUNICATIONS, INC. DEFAULTS ON CERTAIN RDOF CENSUS BLOCK GROUPS IN INDIANA AND NEBRASKA

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, Daviess-Martin County Rural Telephone Corporation (RTC) 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 Indiana (study area code (SAC) 320759).¹ Additionally, Pinpoint Communications, Inc. (Pinpoint) has notified the Commission of its decision to withdraw from the RDOF support program in all of the CBGs covered by its authorized winning bids in Nebraska (SAC 379003).² The carriers will be subject to penalties, as described below, for their defaults.

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

¹ Letter from Kirk Lehman, Chief Executive Officer, Daviess-Martin County Rural Telephone Corporation, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Aug. 30, 2024) (*RTC Withdrawal Letter*). In December 2021, RTC was authorized to receive \$3,565,039.40 in RDOF support over 10 years to serve 1,371 locations in Indiana. *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*; AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 17198, Attach. A (WCB/OEA 2021) (*RTC Authorization Public Notice*). RTC is defaulting on 635 model estimated locations in Indiana. RTC remains committed to deploying service to the remaining CBGs in its RDOF auction supported areas.

² Letter from Carri Bennet, Partner, Counsel to Pinpoint Communications, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, AU Docket No. 20-34 et al. (filed Sept. 27, 2024). The Pinpoint Bidding Coalition assigned its Nebraska winning bids to Pinpoint. *Auction 904 Long-Form Applicants Public Notice*. In November 2021, Pinpoint was authorized to receive \$31,254 in RDOF support over 10 years to serve 32 locations in Nebraska. *Rural Digital Opportunity Fund Support Authorized for 311 Winning Bids*, AU Docket No. 20-34 et al., 36 FCC Rcd 15809 (WCB/OEA 2021) (*Pinpoint Authorization Public Notice*).

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 Connect grantee would be unable to meet the terms of its grant, the Bureau issued a waiver to include 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) RTC will not serve the identified eligible census blocks within the defaulted CBGs in Indiana,⁸ and 2) Pinpoint is defaulting on the eligible census blocks

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).

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. *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). Accordingly, a default must occur at the CBG level. 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. *Id.*; *Rural* (continued....)

within the defaulted CBGs covered by all of its authorized winning bids in Nebraska, 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 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.

(Continued from previous page)

Digital Opportunity Fund et al., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 690-94, paras. 9-16 (2020) (*RDOF Order*).

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 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. *RDOF Order*, 35 FCC Rcd at 709, para. 45. 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.

RTC and Pinpoint remain subject to all eligible telecommunications carrier (ETC) obligations unless and until they follow the relevant procedures to relinquish their designations.¹² Additionally, they cannot discontinue voice service without Commission approval.¹³

RTC. In Appendix A, we provide a list of all the RDOF eligible census blocks contained within the CBGs that RTC will not serve in Indiana. In addition, we will update the Broadband Funding Map to remove these census blocks from RTC'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. RTC 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 RTC's compliance with the applicable deployment obligations in its remaining supported service area.¹⁶

While RTC notified the Commission that it will not serve the identified census blocks, it is not withdrawing from RDOF in Indiana. 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 RTC 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 area with voice and broadband service meeting program requirements.

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) of the Commission's rules.²⁰ Consistent with previous precedent, we also provide a limited waiver of section

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 Oct. 9, 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).

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 (continued....)

54.802(c)(1)(iii) of the Commission's rules to the extent RTC 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.²¹ Generally, the Commission's rules may be waived for good cause shown.²² 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.²³

Despite our limited waivers, which are narrowly tailored to stop payments of future support for the identified census blocks and eliminate the requirement that RTC serve newly built locations in the defaulted census blocks upon reasonable request, RTC otherwise remains subject to section 54.320(d) and 54.806(c)(1) of the Commission's rules.²⁴ If RTC 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.²⁵ 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 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.²⁶ 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 RTC's monthly disbursement, i.e., we will withhold no support other than the support we stopped paying for the identified census blocks.²⁷ 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

(Continued from previous page)

support withholding pursuant to any applicable non-compliance tiers, RTC's monthly support total in Indiana will be approximately \$15,948.

²¹ 47 CFR § 54.802(c)(1)(iii); *Wireline Competition Bureau Announces Lumen Technologies, Inc.'s Default on its RDOF Obligations in Four States and Also Announces Broadband Deployment Alignment Plan Procedures*, AU Docket No. 20-34 et al., Public Notice, DA 24-899, at 5 n.22 (WCB Sept. 9, 2024).

²² 47 CFR § 1.3.

²³ 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*).

²⁴ 47 CFR §§ 54.320(d), 54.806(c)(1).

²⁵ 47 CFR §§ 54.320(d)(1), 54.806(c).

²⁶ 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) ($(\$100/100) \times (100-20) = \$80$ a month). If the carrier is in non-compliance Tier 3 so that we are required to withhold 25% of support (i.e., \$25; $.25 \times \$100$), 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).

²⁷ 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; $.15 \times \$100$), 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).

blocks.²⁸ 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.²⁹

Pinpoint. We consider Pinpoint to have defaulted on its RDOF service milestones in Nebraska. Pinpoint will receive no further RDOF auction support payments³⁰ and is subject to support recovery and non-compliance measures consistent with the Commission's rules.³¹ We will also remove its RDOF service area from the Broadband Funding Map.

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²⁸ 47 CFR § 54.806(c)(1).

²⁹ *Id.*

³⁰ 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 *Pinpoint Authorization Public Notice*, 36 FCC Rcd at 15809-16 (providing a non-comprehensive summary of the RDOF requirements). After Pinpoint notified WCB of its intent to withdraw from the RDOF support program, WCB instructed USAC to suspend Pinpoint's RDOF support payments. 47 CFR §§ 54.320(c), 54.806(b).

³¹ 47 CFR §§ 54.804(c)(4), 54.320, 54.806(c). Pinpoint's decision to withdraw from the RDOF support program 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. 47 CFR § 54.804(c)(4)(i). Carriers seeking relief from applicable support recovery measures have the option of submitting a request for waiver. 47 CFR § 1.3.

Appendix A

Daviess-Martin County Rural Telephone Corporation*RDOF Defaulted Census Blocks*

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002020
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002031
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002038
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002040
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002045
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002047
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002048
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002049
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002050
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002055
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002059
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002064
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002068
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002069
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002077
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002079
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002080
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002083
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002097
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002099
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002100
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002101
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002103
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002105
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002106

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002107
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002110
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002111
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002112
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002114
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002115
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002118
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002122
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002123
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002125
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002144
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544002145
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003017
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003023
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003024
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003025
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003026
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003046
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003056
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003061
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003064
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003077
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003082
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003083
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003086
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003087
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003090

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003097
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Daviess	180279544003107
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001020
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001069
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001070
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001071
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001085
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001086
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001090
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001091
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001100
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001103
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001104
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001105
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001106
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001108
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001110
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001116
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001130
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001131
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001280
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001292
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001322
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001324
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001325
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001329
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001335

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001336
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001349
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001350
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001351
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001352
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001353
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001356
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001357
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001359
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001360
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001362
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001366
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001368
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001369
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001371
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001377
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001381
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001382
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001383
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001384
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001386
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001387
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001390
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001392
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001393
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001399
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001406

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510501001408
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021111
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021112
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021113
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021117
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021125
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021126
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021129
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021130
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021136
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021143
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021147
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021149
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021153
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021154
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021160
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021163
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021195
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021206
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Gibson	180510504021207
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839550003011
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839550003015
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839550003016
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839559001003
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839559001035
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839559001072
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839559001077

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839559001082
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003017
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003040
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003045
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003056
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003058
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003059
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003060
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003062
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003063
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003064
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003065
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003066
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003068
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003069
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003071
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Knox	180839551003077
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506004052
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005016
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005030
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005032
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005034
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005042
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005048
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005049
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005054
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939506005055

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
Telephone Corporation					
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939510004048
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939510004051
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003024
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003025
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003027
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003028
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003029
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003030
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Lawrence	180939507003036
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Pike	181259540002015
Daviess-Martin County Rural Telephone Corporation	0004328704	Indiana	320759	Pike	181259540002016



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1078

Released: October 15, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES RELEASE OF NEW INVOICING FORM FOR THE RURAL HEALTH CARE TELECOMMUNICATIONS PROGRAM

WC Docket No. 02-60

The Wireline Competition Bureau (Bureau) announces the release of the FCC Form 469 (Description of Invoice and Request for Disbursement), the new invoicing form for the Rural Health Care Telecommunications (Telecom) Program. The FCC Form 469 streamlines the invoicing process and offers greater program integrity protections than the previous Telecom Program invoicing form.

In January 2023, the Federal Communications Commission (Commission) adopted rules creating a new Telecom Program invoicing form effective funding year 2024 and eliminated the FCC Form 467 (Connection Certification) and HCP Support Schedule (HSS), which were previously used for invoicing in the Telecom Program.¹ The new FCC Form 469 will ensure that invoicing in the Telecom Program occurs after services have actually started, that service providers are reimbursed for actual costs rather than predetermined amounts established by the HSS, and that participants need not take action to change an HSS if the services are terminated or never begin.²

Service providers initiate the invoicing process by submitting the FCC Form 469 in [RHC Connect](#). The FCC Form 469 can be submitted any time after services have been provided and the service provider sends an invoice to the health care provider.³ A service provider can submit the FCC Form 469 after each month of service or, if it elects to, may alternatively wait until the end of the funding year to submit for all services provided during the funding year.⁴ Health care providers and service providers must make the same certifications on the new form that they have previously made on the old Telecom invoicing forms.⁵

For further information, please contact Sonam James, Telecommunications Access Policy Division, Wireline Competition Bureau at Sonam.James@fcc.gov.

¹ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, 38 FCC Rcd 827, 850 paras. 55-58 (2023) (*Promoting Telehealth Second Report and Order*). The FCC Form 469 was approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act on Nov. 27, 2023. FCC, *Promoting Telehealth in Rural America*, 88 Fed. Reg. 83829, 83830 (Dec. 1, 2023).

² *Promoting Telehealth Second Report and Order*, 38 FCC Rcd at 851, paras. 56-57.

³ *Id.* at 851, para. 58.

⁴ *Id.*

⁵ See 47 CFR § 54.627(c)(1).



**Federal Communications Commission
Washington, DC 20554**

October 16, 2024

DA 24-1079

SMALL ENTITY COMPLIANCE GUIDE

**Establishing the Digital Opportunity Data Collection,
Modernizing the FCC Form 477 Data Program
Fourth Report and Order**

**FCC 24-72
WC Docket Nos. 19-195, 11-10
Released July 12, 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 Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide in the above referenced docket and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in its approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct comments and recommendations, or requests 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 the *Establishing the Digital Opportunity Data Collection, Fourth Report and Order (Fourth Report and Order)*¹, the Commission adopted certain requirements mandated by the Broadband DATA Act,² as well as rules that implemented improvements to the data collection. Specifically, the *Fourth Report and Order*: (1) modifies the Broadband Data Collection (BDC) rules to codify expedited challenge adjudication deadlines as required by the Infrastructure Investment and Jobs Act³ (IIJA); (2) provides a specific delegation of authority to the Office of Economics and Analytics (OEA), in coordination with certain other bureaus and offices, to conduct audits of broadband data submitted by providers (as required under the Broadband DATA Act); and (3) makes ministerial edits to the existing rules to reference the Broadband Data Collection or BDC.

First, the *Fourth Report and Order* modifies the BDC rules to codify the 90-day availability challenge adjudication deadlines to implement the IIJA mandate. Commission staff already functionally implemented this deadline for the availability challenge process as required by the IIJA. In an effort to comply with the Broadband DATA Act, the Commission memorialized in its rules the procedures that Commission staff have followed since the start of the challenge process. In implementing the IIJA's requirements, the Commission considered alternatives for how it could address situations where a challenger and a challenged provider cannot reach a consensus, as section 1.7006(d)(6) requires. In the *Fourth Report and Order*, the Commission set forth that the start date for Commission action should begin once the provider has reported the status of the parties' efforts to resolve the challenge. This step allows small entities and other entities to have sufficient time to resolve challenges on their own, where possible, before Commission staff become involved while helping the Commission adjudicate challenges more efficiently.

Next, the *Fourth Report and Order* formally delegates authority to OEA, in coordination with the Wireless Telecommunications Bureau, the Wireline Competition Bureau, and the Space Bureau, to continue to perform audits using the processes and data specifications currently available. As part of this delegation, OEA is vested with the authority to develop processes or procedures for randomly selecting geographic areas or locations to audit, as well as for determining "cases where there may be patterns of filing incorrect information," consistent with the Commission rules.⁴

Finally, in the *Fourth Report and Order*, the Commission made ministerial changes to its rules to replace references to the "Digital Opportunity Data Collection" or "DODC" with references to the Broadband Data Collection or BDC, as appropriate.

Through the adoption of these rules, the Commission is implementing targeted changes that further address its long-standing objective of closing the digital divide by improving the processes for filers, some of whom consist of small entities.

II. COMPLIANCE REQUIREMENTS

The Commission's actions in the *Fourth Report and Order* amended 47 CFR § 1.7006 to provide that:

¹ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, Fourth Report and Order*, Declaratory Ruling and Fourth Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 11-10, FCC 24-72 (Jul. 12, 2024) (*Fourth Report and Order*).

² 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).

³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60102(h)(2)(E)(i), 135 Stat. 429, 1198 (2021) (codified at 47 U.S.C. § 642(b)(5)(C)(i)), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (IIJA).

⁴ See 47 CFR § 1.7006(a).

- When a fixed service provider disputes a challenge:
 - The 90-day deadline for Commission adjudication of a fixed challenge will begin on the day after the service provider submits a final response, regardless of whether that response is provided on or before the 60th day permitted under the rules. The Commission's former practice was to begin the 90-day period on the day after the deadline for submission of the final response, even when the challenged provider submits the response prior to the deadline. This change in the Commission's process allows us to more expeditiously adjudicate fixed challenges when a final response is filed prior to the end of the full 60-day period.
 - The Commission also clarified that when a provider corrects or updates its final response before the end of the 60-day resolution period, the Commission's adjudication period deadline will restart upon the date of the recertification of the final response (unless the Commission has already adjudicated the challenge prior to the revision of the final response).
- When a mobile service provider disputes a challenge:
 - The provider's response will be final and complete on the 60th day after the provider is notified of the challenge (i.e., the deadline for submitting challenge rebuttal data).
 - The 90-day Commission adjudication deadline required under the IIJA will begin to run on the day after the deadline for submitting the challenge rebuttal data. This will also apply in cases where a provider responds to a challenge sooner than 60 days after it is notified of the challenge.
 - In cases where Commission staff request supplemental data from a provider after receiving the provider's initial response, the adjudication period will restart the day after the deadline by which the supplemental data is due to the Commission (within 60 days of the request for supplemental data).

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Fourth Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The *Fourth Report and Order* became effective on September 16, 2024, 30 days after its publication in the Federal Register.⁵

V. INTERNET LINKS

A copy of the *Fourth Report and Order* is available at:
<https://docs.fcc.gov/public/attachments/FCC-24-72A1.pdf>.

A copy of the Federal Register Summary of the *Fourth Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2024-08-15/pdf/2024-16935.pdf>.

The FCC's webpage on the Broadband Data Collection is available at:
<https://www.fcc.gov/BroadbandData>.

⁵ Federal Communications Commission, Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, 89 Fed. Reg. 66254 (Aug. 15, 2024).

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 24-193
Table of Allotments,	)	RM-11986
FM Broadcast Stations	)	
(Huntley, Montana)	)	

REPORT AND ORDER

Adopted: October 17, 2024

Released: October 17, 2024

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the Notice of Proposed Rule Making and Order to Show Cause,¹ issued in response to a Petition for Rulemaking filed by SSR Communications, Inc. (Petitioner). Petitioner filed Comments and Further Comments (Further Comments).² No other comments or counterproposals were received in response to the *NPRM and OSC*. For the reasons discussed below, we amend the Table of FM Allotments, section 73.202(b) of the Commission's rules,³ by allotting Channel 284A at Huntley, Montana, as the community's first local service. We also modify the license of KYSX, Billings, Montana to specify operation on Channel 286A in lieu of Channel 283C1.

II. BACKGROUND

2. The *NPRM and OSC* proposed the allotment of Channel 284A at Huntley, Montana, as that community's first local service.⁴ To accommodate the proposed Huntley allotment, the *NPRM and OSC*⁵ directed BMG Billings, LLC (BMG), licensee of KYSX, to show cause as to why its license should not be modified to specify operation on Channel 286A in lieu of Channel 283C1 at Billings, Montana.⁶

¹ See *Huntley, Montana*, Notice of Proposed Rule Making and Order to Show Cause, DA 24-614, rel. June 27, 2024 (MB 2024), 2024 WL 3225341 (*NPRM and OSC*); see also 89 FR 55911 (published July 8, 2024).

² We accept Petitioner's Further Comments because no other party would be prejudiced. See *Dulac, Louisiana*, Report and Order, 24 FCC Rcd. 10154 (MB 2009) (accepting late-filed comments because no other party filed comments or would be prejudiced by acceptance of the Petitioner's Comments).

³ 47 C.F.R. § 73.202(b).

⁴ See *NPRM and OSC*, para. 7.

⁵ See *NPRM and OSC*, para. 8.

⁶ Station KYSX was originally licensed for Channel 286A in Billings Montana. On December 16, 2009, the Commission re-issued to KYSX a construction permit to specify operation on Channel 283C1 in Billings, Montana. See *NPRM and OSC*, para 6; see also *Broadcast Actions*, Public Notice, Report No. 47136 (MB 2009). Pending completion of that move, KYSX is operating pursuant to an implied STA on Channel 286A based on its previously licensed facilities, Application File No. BMLH-20060712AFZ. See *Entravision Holdings, LLC KDVA(FM), Buckeye, AZ*, Memorandum Opinion and Order, 37 FCC Rcd 1343, 1354 ¶ 24 (2022) (stating that where an existing full-service non-reserved band FM station's license has been modified to specify a new channel, the station is neither licensed to its old channel nor entitled to any protection based on its formerly licensed facilities).

The Media Bureau sent the *NPRM and OSC* to BMG twice by certified mail, but the envelopes were returned as undeliverable. On September 25, 2024, the staff contacted Mr. Pete Benedetti, owner of BMG, by telephone. Mr. Benedetti informed the staff that BMG has no interest in constructing the facility authorized by its construction permit on the reserved Channel 283C1 at Billings and consented to remain on its licensed Channel 286A. Based on this input, we modify KYSX's license to specify operation on Channel 286A at Billings, Montana. Petitioner filed Comments reiterating its intent to file an application for a construction permit to operate a new FM commercial broadcast station at Huntley, Montana⁷ and construct the station promptly in the event that the Commission grants its application.⁸ In its Further Comments, Petitioner reiterates its intention to apply for Channel 284A, Huntley, Montana, if allotted. It will participate in a future FM auction, and if it is the successful winning bidder, it will promptly construct and operate the proposed station in the event the Commission grants its application.⁹

III. DISCUSSION.

3. Accordingly, we modify the KYSX license to specify operation on Channel 286A in lieu of Channel 283C1 at Billings, Montana, and allot Channel 284A at Huntley, Montana, as the community's first local service under Priority (3).¹⁰ A staff engineering analysis reveals that Channel 284A can be allotted to Huntley, Montana, consistent with the minimum distance separation requirements of the Commission's rules with a site restriction of 13.9 km (8.6 miles) north of the community.¹¹ The reference coordinates are 46-01-30 NL and 108-18-00 WL.

4. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,¹² do not apply to a rulemaking proceeding to amend the Table of FM Allotments, section 73.202(b) of the Commission's rules.¹³ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.¹⁴ In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.¹⁵

IV. ORDERING CLAUSES

5. IT IS ORDERED that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective December 2, 2024, the Table of FM Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

⁷ As stated in the *NPRM and OSC*, Petitioner concurrently filed a construction permit application, File No. 0000243492, for Channel 284A at Huntley and paid the necessary filing fee. See *NPRM and OSC*, para 1.

⁸ See Comments at 1.

⁹ See Further Comments at 1.

¹⁰ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

¹¹ 47 CFR § 73.207.

¹² 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹³ 47 CFR § 73.202(b).

¹⁴ 44 U.S.C. §§ 3501-3520.

¹⁵ 44 U.S.C. § 3506(c)(4).

Community

Huntley, Montana

Channel No.

284A

6. The window period for filing applications for Channel 284A at Huntley, Montana will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau



DA 24-1081

Released: October 18, 2024

ROBOCALL ENFORCEMENT NOTICE TO ALL U.S.-BASED VOICE SERVICE PROVIDERS

FCC Enforcement Bureau Notifies All U.S.-Based Providers of Rules Permitting Them to Block Robocalls Transmitting from Identidad Advertising Development LLC

File No. at EB-TCD-24-00037229

By the Chief, Enforcement Bureau:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) issues this Public Notice to notify all U.S.-based voice service providers about substantial amounts of apparently unlawful robocalls transmitted by Identidad Advertising Development LLC (Identidad). **Pursuant to section 64.1200(k)(4) of the Commission's rules, we hereby notify all U.S.-based voice service providers that if Identidad fails to mitigate the identified traffic described in the cease-and-desist letter (CDL) listed below, U.S.-based voice service providers may block voice calls or cease to accept traffic from Identidad, without liability under the Communications Act of 1934, as amended, or the Commission's rules.¹**

Contemporaneous with this *Public Notice*, the Bureau is issuing a CDL to the following voice service provider:²

- **Identidad**

USTelecom's Industry Traceback Group (ITG)³ identified Identidad as a gateway provider for substantial volumes of apparently unlawful robocalls, including calls that impersonate financial institutions.⁴ Pursuant to the CDL, Identidad must: (1) promptly investigate the traffic identified in the CDL; (2) block the identified traffic and substantially similar traffic on an ongoing basis (unless it determines that the identified traffic is legal and provides a reasonable explanation to support that conclusion); and (3) report

¹ 47 CFR § 64.1200(k)(4) (permitting downstream providers to block calls from a notified provider that fails to either (a) mitigate the identified traffic within 48 hours or (b) implement effective measures to prevent new and renewing customers from using its network to originate illegal calls).

² Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Andres Sanchez, Chief Executive Officer, Identidad Advertising Development LLC (Oct. 18, 2024) (Identidad Letter). This letter is available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cess-and-desist>.

³ USTelecom's Industry Traceback Group is the registered industry consortium selected pursuant to the TRACED Act, to conduct tracebacks to identify suspected bad actors. See *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, Pub. L. No. 116-105 § 13(d), 133 Stat. 3274, 3287 (2019); *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 38 FCC Rcd 7561, 7578, para. 43 (EB 2023).

⁴ See ITG Subpoena Response (Sept. 30, 2024) (on file at EB-TCD-24-00037229) (ITG Subpoena Response).

the results of the investigation to the Bureau within 14 days of the date of the CDL.⁵ If Identidad fails to comply with those requirements, the Bureau may ultimately issue a Final Determination Order, which would require downstream voice service providers to block and cease accepting all traffic from Identidad.⁶

The CDL also serves as notice that downstream U.S.-based voice service providers may begin blocking all calls from Identidad after notifying the Commission of their decision, and providing a brief summary of their basis for making such a determination, if either (a) after 48 hours Identidad fails to effectively mitigate illegal traffic, or (b) to the extent that Identidad originates traffic, after 14 days Identidad fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls.⁷ **U.S.-based voice service providers may block ALL call traffic transmitting from Identidad's network if it fails to act within either deadline.**

Purpose. Protecting individuals and entities from the dangers of unwanted and illegal robocalls is the Commission's top consumer protection priority.⁸ As part of its multi-pronged approach to combatting illegal robocalls, the Commission has taken steps to encourage voice service providers to block suspected illegal robocalls.⁹ The Commission permits voice service providers to block traffic from other voice service providers that the Bureau has warned are transmitting suspected illegal robocalls.¹⁰ The Bureau has issued numerous "cease-and-desist" letters, warning voice providers that they were originating or transmitting suspected illegal robocalls and could be subject to blocking.¹¹ The Commission placed additional obligations on gateway providers in May 2022 by requiring they block illegal traffic when the Bureau has notified them of such traffic.¹² If the gateway provider continues to transmit substantially similar traffic or fails to respond to the Bureau's CDL, the Commission may ultimately issue a final

⁵ Identidad Letter at 4-5.

⁶ 47 CFR § 64.1200(n)(2)-(3).

⁷ *Id.* § 64.1200(k)(4).

⁸ Fed. Commc'ns Comm'n, *Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Sept. 30, 2024) ("Unwanted calls – including illegal and spoofed robocalls – are the FCC's top consumer complaint and our top consumer protection priority.").

⁹ See 47 CFR § 64.1200(k)(1)-(4), (11); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15234-35, para. 39 (2020) (expanding existing safe harbor to cover network-level blocking of traffic based on reasonable analytics that includes caller ID authentication information where available without consumer opt-in or opt-out); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622-23, para. 19 (2020) (*July 2020 Call Blocking Order*) (establishing safe harbors for blocking traffic based on reasonable analytics or from bad-actor upstream voice service providers that fail to effectively mitigate illegal traffic following Commission notification); *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4887-88, 4890-91, paras. 34-35, 43-46 (2019) (blocking based on reasonable analytics with consumer opt-out and consumer whitelists with consumer opt-in); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017) (blocking of certain categories of calls that are highly likely to be illegal).

¹⁰ See 47 CFR § 64.1200(k)(4); *July 2020 Call Blocking Order*, 35 FCC Rcd at 7628-29, paras. 36-39.

¹¹ These letters are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

¹² *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order on Reconsideration in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, 37 FCC Rcd 6865, 6897-98, para. 74 (2022) (*Gateway Provider Order*).

determination order that requires providers immediately downstream from the gateway provider to block all of its traffic.¹³

Nature of Apparently Unlawful Robocall Traffic. Between August 8, 2024, and September 14, 2024, Identidad appeared in five tracebacks as the gateway provider for suspected illegal robocalls that impersonated financial institutions.¹⁴ The calls were made to cell phone numbers using a prerecorded voice without the called party's consent or an emergency purpose.¹⁵ The robocalls played variations of the following prerecorded message:

This is a transaction alert call from Visa and Mastercard support. There has [sic] been two transactions done on your card for \$299.00 on Walmart and \$3,950.00 on Western Union. If you have made these transactions and accept the charges simply hangup. If you have not made these transactions and you wish to report fraud please press 1 immediately.¹⁶

Consumers who responded to similar calls under of this robocall campaign assert that they were instructed to make payments or provide sensitive financial information:

Received a call from "chase bank" it wasn't chase and they said I had fraudulent activity so I called them back knowing they weren't chase and they tried to get me to send \$2,000 to them [].¹⁷

Potential Further Enforcement Action. The Bureau will issue an Initial Determination Order in the event that either: (a) Identidad fails to respond to the CDL; (b) the Bureau determines that the response is insufficient or that the traffic is illegal despite the provider's assertions; or (c) the Bureau determines that Identidad is continuing to allow substantially similar traffic onto the U.S. network.¹⁸ Identidad will have at least 14 days to respond to the Initial Determination Order.¹⁹ If Identidad fails to provide an adequate and timely response to the Initial Determination Order, or Identidad continues to allow substantially similar traffic onto the U.S. network, then the Bureau will publish a Final Determination Order in EB Docket No. 22-174.²⁰ **In the event that the Bureau issues a Final Determination Order in this matter, pursuant to section 64.1200(n)(3) of the Commission's rules, all immediately downstream U.S.-based voice service providers shall be required to block Identidad's traffic.**²¹

Contact Information. For further information, please contact Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1318 or by email at

¹³ 47 CFR § 64.1200(n)(3) (requiring downstream providers to block a gateway provider's traffic if the Bureau issues a Final Determination Order); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, Seventh Report and Order in CG Docket 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17-59, and Third Notice of Inquiry in CG Docket 17-59, 38 FCC Rcd 5404, 5417-18, para. 37 (2023); *Gateway Provider Order*, 37 FCC Rcd at 6897-98, para. 74.

¹⁴ See ITG Subpoena Response, *supra* note 4.

¹⁵ See 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii); see ITG Subpoena Response, *supra* note 4.

¹⁶ ITG Subpoena Response, *supra* note 4.

¹⁷ FCC Complaint #7157632 (July 15, 2024) (on file at EB-TCD-24-00037229).

¹⁸ 47 CFR § 64.1200(n)(2)(ii).

¹⁹ *Id.*

²⁰ *Id.* § 64.1200(n)(2)(iii).

²¹ *Id.* § 64.1200(n)(3). Providers must monitor EB Docket No. 22-174 and initiate blocking beginning 30 days from the release date of the Final Determination Order. *Id.*

Kristi.Thompson@fcc.gov; or Raul Rojo, Attorney Advisor, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1336 or by email at Raul.Rojo@fcc.gov.

ENFORCEMENT BUREAU
Loyaan A. Egal
Chief



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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News media information: 202-418-0500
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DA No. 24-1082

Report No. SAT-01864

Friday, October 18, 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-20240627-00184 E 52983 Space Exploration Holdings, LLC

Special Temporary Authority

Grant of Authority

Effective Date: 10/18/2024

On October 18, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC for special temporary authority, for an additional period of 180 days, to permit communications between SpaceX first generation satellites and U.S. earth stations at latitudes above 73 degrees using elevations down to ten degrees. Specifically, SpaceX is authorized to temporarily adjust the minimum elevation angle from 25 degrees to ten degrees at latitudes above 73 degrees for communications in the 10.7-12.7 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20240912-00101 E 52380 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 10/18/2024

Nature of Service: Fixed Satellite Service

On October 16, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC to continue to conduct telemetry, tracking, and command (TT&C) operations necessary to drift Intelsat 9 from the 310.8° E.L. orbital location to the 86.25° E.L. orbital location using the following TT&C carrier frequencies: 11.7005 GHz and 11.7020 GHz (space-to-Earth), and 14.0005 GHz and 14.4945 GHz (Earth-to-space).

SAT-STA-20241010-00221 E 52380 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 10/17/2024

Nature of Service: Fixed Satellite Service

On October 17, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for up to 80 days starting October 23, 2024, to operate Intelsat 9 at the 86.25° E.L. orbital location. Intelsat 9 will provide fixed-satellite service at the 86.25° E.L. orbital location in the 3700-4200 MHz (space-to-Earth), 3925-4425 MHz (Earth-to-space), 11.45-11.7 GHz (space-to-Earth), 11.7-12.2 GHz (space-to-Earth), and 14.0-14.5 GHz (Earth-to-space) frequency bands. Intelsat 9 will perform telemetry, tracking, and command operations using the following carrier frequencies: 11.7005 GHz and 11.7020 GHz (space-to-Earth), and 14.0005 GHz and 14.4945 GHz (Earth-to-space).

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



**Federal Communications Commission
Washington, DC 20554**

October 18, 2024

DA 24-1083

SMALL ENTITY COMPLIANCE GUIDE

Addressing the Homework Gap through the E-Rate Program

**FCC 24-76
WC Docket No. 21-31
Released July 29, 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 Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide in the above referenced docket and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in its approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct comments and recommendations, or requests 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

On July 29, 2024, the Commission released the *Addressing the Homework Gap through the E-Rate Program Report and Order and Further Notice of Proposed Rulemaking (2024 E-Rate Hotspots Report and Order)*.¹ In the *2024 E-Rate Hotspots Report and Order*, the Commission modernized the E-Rate program to meet the evolving needs of schools and libraries around the country by allowing E-Rate support for the distribution of Wi-Fi hotspots and services to students, school staff, and library patrons for off-premises use.

The E-Rate program supports high-speed, affordable Internet services to and within school and library buildings, and has been instrumental in providing students, school staff, and library patrons with access to the essential broadband services that are required for next-generation learning. The *2024 E-Rate Hotspots Report and Order* takes further steps to permit participating schools and libraries to use E-Rate support to establish Wi-Fi hotspot lending programs to provide the Wi-Fi hotspot devices and monthly mobile wireless broadband services needed to connect individuals who lack the Internet access needed to engage in remote learning. To accomplish this and to preserve the limited E-Rate funding, the *2024 E-Rate Hotspots Report and Order* adopts funding caps for hotspot devices and services, and a budget mechanism that limits the amount of support an eligible school or library can request for Wi-Fi hotspots and services that can be loaned to their students, school staff, and library patrons. To maintain the Commission's commitment to supporting the connectivity needs of school and library buildings, it also adopts rules to prioritize funding for on-premises equipment and services before funding off-premises equipment and services. Additionally, it establishes safeguards to ensure E-Rate-funded Wi-Fi hotspots and services are used for their intended purpose, including recordkeeping and usage requirements for applicants and service providers. Finally, the *2024 E-Rate Hotspots Report and Order* finds that the obligations of the Children's Internet Protection Act (CIPA) apply if the school or library receives E-Rate support for Internet service, Internet access, or network connection services or related equipment, including Wi-Fi hotspots.

These rule changes will provide eligible schools and libraries with much-needed assistance in getting the students, school staff, and library patrons with the greatest need connected via Wi-Fi hotspots and services that can be used off-premises. This furthers the Commission's E-Rate program goal of ensuring affordable access to high-speed broadband sufficient to support digital learning for schools and robust connectivity for all libraries.

II. COMPLIANCE REQUIREMENTS

The *2024 E-Rate Hotspots Report and Order* amends part 54 of Title 47 of the Commission's rules to make the off-premises use of Wi-Fi hotspots and services eligible for E-Rate program support. A summary of the relevant rule amendments is included below.

A. Definitions of Wi-Fi and Wi-Fi Hotspot Adopted for E-Rate Program (47 CFR § 54.500)

The Commission adopted definitions of "Wi-Fi" and "Wi-Fi hotspot" for purposes of E-Rate funding. Specifically, "Wi-Fi" is defined as "wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11" and "Wi-Fi hotspot" is defined as "a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi."

B. Establishing an Off-Premises Wi-Fi Hotspot Lending Program Mechanism (47 CFR §§ 54.502(e)(1)-(4), (7)-(9))

Under the amended rules, eligible schools and libraries will be eligible for a budgeted amount of pre-discount support for off-premises Wi-Fi hotspots and services over a three year funding cycle. The

¹ *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76 (Jul. 29, 2024) (*2024 E-Rate Hotspots Report and Order*).

first three-year Wi-Fi hotspot budget cycle will run from funding year 2025 through funding year 2027, after which the budgets will reset in funding year 2028. The budgets will rely on pre-discount funding caps of \$15 per month on recurring mobile wireless Internet service and \$90 per Wi-Fi hotspot device. Wi-Fi hotspots and services purchased with E-Rate support may only be used by students, school staff, and library patrons, and no more than one Wi-Fi hotspot may be distributed per user.

Schools and school districts will calculate their Wi-Fi hotspot budgets by multiplying their student counts by 20% (i.e., 20 hotspots per 100 students), and adjusting by their category one discount rates. This number is rounded up to the nearest ten. The applicant then multiplies that rounded number by the three-year cost of the funding caps (\$630) to determine the three-year budget.

Libraries and library systems will calculate their Wi-Fi hotspot budgets based on their square footage, allowing 5.5 devices per 1,000 square feet, adjusted by their category one discount rates. This number is rounded up to the nearest ten. The applicant then multiplies that rounded number by \$630 to determine the three-year pre-discount budget.

C. Prioritizing On-Premises Uses (47 CFR § 54.507(f)(4))

In the amended rules, funding requests for category one equipment and services used off-premises, including Wi-Fi hotspots and Wi-Fi on school buses, will be funded after on-premises category one and category two equipment and services in the event that demand exceeds the available E-Rate funding in any given funding year.

D. Safeguarding E-Rate-Funded Wi-Fi Hotspots and Services Used Off-Premises

1. Educational Purposes (47 CFR §§ 54.504(g), 54.516(f))

Eligible schools and libraries will be required to update and publicly post an acceptable use policy that states that the off-premises use of the Wi-Fi hotspot and/or service is primarily for educational purposes as defined in 47 CFR § 54.500 and that the Wi-Fi hotspot and/or service is for use by students, school staff members, and/or library patrons who need it. Eligible schools and libraries will be required to certify to meeting these requirements.

2. Usage (47 CFR §§ 54.502(e)(5)-(6), 54.504(a)(1)(xii)), (g), 54.516(g))

The rules establish verification processes to ensure that E-Rate-supported Wi-Fi hotspots are in use. To prevent warehousing of devices, the revised rules prohibit applicants from requesting Wi-Fi hotspots as part of a one-to-one initiative (i.e., where every student gets a hotspot) or for future use, emergency use, or use in the case of theft, loss, or breakage. Applicants are required to certify that they have activated the Wi-Fi hotspot and service, made it available for loan, and publicized the availability of the Wi-Fi hotspot device and service to students, teachers, and library patrons via public notice or other means.

Unused Lines. Additionally, at least once every 31 days, service providers are required to determine whether any E-Rate-supported lines have zero data usage in the prior 60 days and provide notice to the applicant of the particular lines within 5 business days. If there is zero data usage for 90 days, service providers must discontinue service to such lines. Service providers may not charge early termination fees for lines of service associated with Wi-Fi hotspots that are lost, broken, or unused. Service providers are also not permitted to bill applicants for unused lines of service that are discontinued.

Data Usage Reports. Under the amended rules, service providers must provide reports regarding Wi-Fi hotspot data usage for off-premises use to applicants, and applicants are required to make the reports available to any representative (including any auditor) appointed by a state education department, the Universal Service Administrative Company (USAC)—the administrator of the E-Rate Program, the FCC, or any local, state, or federal agency with jurisdiction over the entity upon request. The revised rules require the data usage reports to be in machine-readable digital format so that information lines can be read and sorted, clearly identifying the lines that are not being used across billing periods and the lines that have been terminated pursuant to the non-usage rules.

3. Recordkeeping, Auditing, and Inspections (47 CFR § 54.516(a)(1), (b), (e)-(g))

For each Wi-Fi hotspot and/or service line, a school or library is required to maintain an asset and service inventory that identifies the:

- Equipment make/model;
- Equipment serial number;
- Full name of the person to whom the equipment was provided (for schools only);
- Dates the equipment was loaned out and returned, or the date the school was notified that the equipment was missing, lost, or damaged; and
- Service detail – the line number or other unique identifier that associates a device to that particular line of service.

Consistent with the Commission's existing rules, asset and service inventories, as well as the other records required by the *2024 E-Rate Hotspots Order*, including the acceptable use policies and data usage reports, must be kept for at least 10 years. Under the revised rules, entities may anonymize or deidentify any personally identifiable information when producing records requested by USAC, or the FCC as part of an audit or investigation.

4. Duplicate Funding (47 CFR §§ 54.504(a)(1)(x), 54.506)

Under the amended rules, applicants are prohibited from seeking E-Rate support for equipment or services that have already been funded with other Federal, state, Tribal, or local funding and must certify that the equipment or services have not been funded through some other source.

5. Equipment Disposal (47 CFR § 54.513(b))

Under the amended rules, Wi-Fi hotspots will be considered obsolete after three years. At that time, they may be resold, disposed of, donated, or traded.

E. Children's Internet Protection Act (CIPA) (47 CFR § 54.520 (c)(1)(iii)(C), (2)(iii)(C), (3)(i)(C))

CIPA obligations apply to school or library-owned computers if the school or library received E-Rate support for Internet service, Internet access, or network connection services or related equipment, including Wi-Fi hotspots or mobile wireless Internet services.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *2024 E-Rate Hotspots Report and Order* contains new or modified information collection and reporting requirements that are codified in section 54.516 of the Commission's rules. As described in section II.D above, the *2024 E-Rate Hotspots Report and Order* adopts rules requiring schools and libraries and/or service providers to maintain certain records.

Schools and Libraries. Under the revised rules, schools and libraries must retain the following records related to E-Rate-funded Wi-Fi hotspots:

- An asset and service inventory that identifies the information in section II(D)(3) above (Recordkeeping, Auditing, and Inspections).
- An acceptable use policy that clearly states that the off-premises use of the Wi-Fi hotspot and/or service is primarily for educational purposes as defined in 47 CFR § 54.500 and that the Wi-Fi hotspot and/or service is for use by students, school staff members, and/or library patrons who need it.
- Data usage reports regarding off-premises Wi-Fi hotspot data usage. Data usage reports must be in machine-readable digital format so that information lines can be read and sorted, clearly

identifying the lines that are not being used across billing periods and the lines that have been terminated.

Service Providers. Under the revised rules, service providers must retain the following records related to E-Rate-funded Wi-Fi hotspots:

- Data usage reports on Wi-Fi hotspot data usage at least once per billing period. Data usage reports must be in machine-readable digital format so that information lines can be read and sorted, clearly identifying the lines that are not being used across billing periods and the lines that have been terminated.

E-Rate applicants and service providers continue to be subject to audits and existing recordkeeping requirements. E-Rate applicants and service providers are required to retain documentation regarding the application for, receipt and delivery of E-Rate-supported equipment and services, and demonstrating compliance with the E-Rate program rules for at least ten (10) years.²

IV. IMPLEMENTATION DATE

The rules in the *2024 E-Rate Hotspots Report and Order* became effective on September 19, 2024, with the exception of 47 CFR §§ 54.504(a)(1)(x)-(xii), 54.504(g) and 54.516(e)-(g), which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. These rules shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

V. INTERNET LINKS

A copy of the *2024 E-Rate Hotspots Report and Order* is available at:
<https://docs.fcc.gov/public/attachments/FCC-24-76A1.pdf>.

A copy of the Federal Register Summary of the *2024 E-Rate Hotspots Report and Order* is available at:
<https://www.federalregister.gov/d/2024-18122>.

An overview of the E-Rate program, along with information on the other program requirements, can be found on the website of the program's administrator, the Universal Service Administrative Company (USAC), at <https://www.usac.org/e-rate/>.

The FCC's overview of the Schools & Libraries Program, including the *2024 E-Rate Hotspots Report and Order*, is available at: <https://www.fcc.gov/general/e-rate-schools-libraries-usf-program>.

² 47 CFR § 54.516.



Federal Communications Commission
Washington, D.C. 20554

October 18, 2024

DA 24-1084
In Reply Refer to:
1800B3-SDW
Released October 18, 2024

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In re: **NCE FM Singleton Applications**

Remanente Broadcasting Network
New NCE FM, Crystal, NV
Facility ID No. 766048
Application File No. 0000167138

Remanente Broadcasting Network
New NCE FM, Desert Center, CA
Facility ID No. 766056
Application File No. 0000167140

NCE MX Group 34

Remanente Broadcasting Network

New NCE FM, Boron, CA

Facility ID No. 766053

Application File No. 0000167635

Cedar Broadcasting, Inc.

New NCE FM, Randsburg, CA

Facility ID No. 763325

Application File No. 0000166110

Nevada Public Radio

New NCE FM, Ridgecrest, CA

Facility ID No. 765532

Application File No. 0000167275

NCE MX Group 208

Remanente Broadcasting Network

New NCE FM, Moroni, UT

Facility ID No. 766042

Application File No. 0000167147

University of Utah

New NCE FM, Soldier Summit, UT

Facility ID No. 762619

Application File No. 0000166314

Informal Objection

Dear Applicants, Objector, and Counsel:

We have before us the above-referenced applications for construction permits for new noncommercial educational (NCE) FM stations for different communities in Nevada, California, and Utah, including four applications filed by Remanente Broadcasting Network (RBN and RBN Applications). Two of the RBN Applications are singletons.¹ The Commission and the Media Bureau (Bureau) identified the remaining two RBN Applications as the tentative selectees in NCE MX Group 34²

¹ Application File Nos. 0000167138 (Crystal Application) and 0000167140 (Desert Center Application). These applications propose to serve Crystal, Nevada, and Desert Center, California, respectively.

² Application File No. 0000167635. This application is mutually exclusive with the applications of Cedar Broadcasting, Inc. (CBI and CBI Application), Application File No. 0000166110, and Nevada Public Radio (NPR and NPR Application), Application File No. 0000167275. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021).

and NCE MX Group 208, respectively.³ We also have before us informal objections (Objection)⁴ filed by Triangle Access Broadcasting, Inc. (Triangle), on March 15, 2022, regarding all four RBN Applications, and related responsive pleadings filed by RBN and Triangle.⁵ On June 22, 2023, the Bureau issued a Letter of Inquiry (LOI) to RBN,⁶ and we have before us RBN's response to the LOI (LOI Response).⁷ For the reasons set forth below, we deny the Objection, dismiss the CBI Application, dismiss the NPR Application, dismiss the UOU Application, and grant three of the four RBN Applications.⁸

Background. RBN, CBI, UOU, and NPR each filed their respective applications during the 2021 NCE FM filing window.⁹ As noted above, the RBN Crystal Application and Desert Center Application are singletons.¹⁰ In the *Third Comparative Order*, the Commission compared the RBN, CBI, and NPR applications—the applications designated as NCE MX Group 34—under the point system,¹¹ identified RBN as the tentative selectee of NCE MX Group 34, and established a 30-day period for filing petitions to deny.¹²

Similarly, in the *First Fair Distribution Order*, the Bureau conducted a fair distribution analysis of the RBN and UOU applications—the applications designated as NCE MX Group 208—pursuant to

³ Application File No. 0000167147. This application is mutually exclusive with the application of University of Utah (UOU and UOU Application), Application File No. 0000166314.

⁴ Pleading File Nos. 0000186687, 0000186685, and 0000186680 (filed Mar. 15, 2022). The Bureau dismissed the Objection as moot as it related to the Desert Center Application when it dismissed that application. *See* Pleading File No. 0000186681 (filed Mar. 15, 2022, dismissed June 9, 2022). RBN subsequently sought reinstatement of the Desert Center Application, and the Bureau reinstated the application. Accordingly, we will also consider the Objection herein as it pertains to that application.

⁵ RBN filed an Opposition (Pleading File No. 0000212708, filed Mar. 17, 2023). RBN filed a second opposition in which it “corrects typographical errors contained in the previous filing” and withdrew the original version submitted on March 17, 2023 (Corrected Opposition) (Pleading File No. 0000212715, filed Mar. 19, 2023). Triangle filed a Reply to the Corrected Opposition (Pleading File No. 0000213007, filed Mar. 27, 2023). RBN only filed the Opposition with respect to one of the RBN Applications, Application File No. 0000167635. However, the arguments in the Opposition can be applied to all four RBN Applications, and we therefore consider them to apply as such.

⁶ *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Dan J. Alpert, Esq., counsel to RBN.

⁷ *See* E-Mail from Dan J. Alpert, Esq., counsel to RBN, to Alexander Sanjenis, Audio Division, FCC Media Bureau (July 24, 2023).

⁸ We are holding the Crystal Application—one of the singletons—pending further technical review.

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

¹⁰ *Supra* note 1. An application which is not in conflict with any other application is deemed a singleton application.

¹¹ *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 38 FCC Rcd 789, 798-800, paras. 29-31 (2023) (*Third Comparative Order*). No applicant claimed eligibility for a fair distribution preference. RBN and NPR each received two points for diversity of ownership; CBI did not receive any points. RBN and NPR proceeded to a tie-breaker analysis, in which RBN prevailed.

¹² *Id.* at 816, para. 114.

section 307(b) of the Communications Act of 1934, as amended, identified RBN as the tentative selectee of NCE MX Group 208, and established a 30-day petition to deny period.¹³

In its Objection, Triangle alleges that two of RBN's directors, Dr. Edith Gonzalez Werner (Werner) and Delia Gloria Gonzalez (Gonzalez), have held attributable interests in multiple LPFM stations in violation of the Commission's LPFM ownership limits.¹⁴ Specifically, Triangle alleges that these individuals were common officers of Cadena Radial Remanente (CRR), licensee of LPFM station KZLQ-LP, La Quinta, California,¹⁵ and Cadena Radial Mision y Vision (Mision), licensee of LPFM station KRAQ-LP, Rancho Mirage, California, and that they filed inaccurate information with the Commission to conceal such interests, as evidenced by information filed with other federal and state agencies on public records.¹⁶ Triangle alleges that RBN, CRR, and Mision are commonly controlled in violation of the LPFM cross-ownership restrictions in section 73.860 of Commission's rules (Rules).¹⁷

In the Corrected Opposition, RBN acknowledges that "certain of [its directors] . . . have assisted" CRR and Mision in the past,¹⁸ but states that the principals of RBN ceased "all involvement in governing positions with" CRR and Mision "prior to the opening of the FCC's November 2021 Filing Window."¹⁹ RBN also states that "[t]he [d]irectors of RBN have no attributable interest in those entities,"²⁰ and that the organizations are not commonly controlled.²¹

In the Reply, Triangle claims that the Corrected Opposition serves as an "admission that RBN's principals have held attributable interests in both Mision and CRR."²² Triangle urges the Bureau to "consider the history of multiple LPFM ownership and obfuscation of attributable interests to determine whether RBN's principals meet the qualifications to hold broadcast licenses."²³

In the LOI Response, RBN admits that Werner and Gonzalez served as directors of both CRR and Mision from July 2018 through August 2021, and that they were "not aware" that they could not "serve as directors simultaneously of two LPFM stations."²⁴ RBN explained that Werner and Gonzalez "became

¹³ See *Threshold Fair Distribution Analysis of 15 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 2981, 2987, para 21 (MB Mar. 9, 2022) (*First Fair Distribution Order*). RBN provided a second NCE service to 59,108 people; and UOU provided a second NCE service to 3,579 people. Because RBN proposed to provide a new second NCE service to at least 5,000 more people than UOU, it prevailed.

¹⁴ Objection at 2-3.

¹⁵ *Id.* The Objection was also filed against CRR regarding the license renewal application of KZLQ-LP. Pleading File No. 0000186667 (filed Mar. 15, 2022).

¹⁶ *Id.*

¹⁷ *Id.* at 1-2 (citing 47 CFR § 73.860).

¹⁸ Declaration of Dr. Edith Gonzalez Werner, Attach. A to Corrected Opposition (Gonzalez Werner Declaration).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Corrected Opposition at 3.

²² Reply at 2.

²³ *Id.*

²⁴ LOI Response at 3-4.

aware of” the LPFM ownership restrictions only after they each resigned from CRR and Mision in August 2021 “in order to apply for NCE FM stations.”²⁵

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),²⁶ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²⁷

Section 73.860(a) of the Rules prohibits a party from holding an attributable interest in both an LPFM station and a non-LPFM broadcast station.²⁸ Here, the record reflects that RBN directors, Werner and Gonzalez, resigned from LPFM licensees CRR and Mision in August 2021, prior to RBN filing the RBN Applications in the 2021 NCE FM filing window. Werner submitted a declaration to the Bureau, under penalty of perjury, stating that neither she nor any other director of RBN had attributable interests in CRR and Mision at the time the RBN Applications were filed. Accordingly, we reject Triangle's argument that Werner and Gonzalez hold attributable interests in CRR and Mision in violation of the LPFM cross-ownership rules.

Moreover, on September 30, 2024, the Bureau and CRR entered into a consent decree that resolves issues regarding CRR's compliance with, *inter alia*, section 73.860(d) of the Rules, related to Werner's and Gonzalez's roles as common directors of both CRR and Mision between 2018 to 2021.²⁹ Accordingly, we find that the Objection has not demonstrated, and the record does not reflect, any violation of the LPFM cross-ownership rules with respect to the RBN Applications.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objections filed by Triangle Access Broadcasting, Inc., on March 15, 2022 (Pleading File Nos. 0000186680, 0000186687, and 0000186685), **ARE DENIED**.

IT IS FURTHER ORDERED that the application filed by Remanente Broadcasting Network for a construction permit for a new NCE FM station at Desert Center, California (Application File No. 0000167140) **IS GRANTED**.

NCE MX Group 34. **IT IS FURTHER ORDERED** that the application filed by Remanente Broadcasting Network for a construction permit for a new NCE FM station at Boron, California (Application File No. 0000167635) **IS GRANTED CONDITIONED UPON** that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative

²⁵ *Id.*

²⁶ 47 U.S.C. § 309(d).

²⁷ 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).

²⁸ 47 CFR § 73.860(a).

²⁹ *Cadena Radial Remanente*, Order and Consent Decree, DA 24-959 (MB Sept. 30, 2024).

qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

IT IS FURTHER ORDERED that the mutually exclusive application of Cedar Broadcasting, Inc., for a construction permit for a new NCE FM station at Randsburg, California (Application File No. 0000166110) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Nevada Public Radio for a construction permit for a new NCE FM station at Ridgecrest, California (Application File No. 0000167275) **IS DISMISSED**.

NCE MX Group 208. **IT IS FURTHER ORDERED** that the application filed by Remanente Broadcasting Network for a construction permit for a new NCE FM station at Moroni, Utah (Application File No. 0000167147) **IS GRANTED CONDITIONED UPON** that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

IT IS FURTHER ORDERED that the mutually exclusive application of University of Utah for a construction permit for a new NCE FM station at Solider Summit, Utah (Application File No. 0000166314) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-6322

DA 24-1085

Released: October 19, 2024

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR NORTH CAROLINA AND TENNESSEE FOR HURRICANE HELENE

The Federal Communications Commission (the Commission), at the request of the States of North Carolina and Tennessee, and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, has deactivated its Disaster Information Reporting System (DIRS) for Hurricane Helene.¹ Communications providers do not need to provide any additional reporting in DIRS in connection with this event. The Commission will instead commence periodic individual conference calls with relevant communications providers to discuss the status of their restoration efforts as well as lessons learned to prepare for the coming hurricane season.

Effective today, no further reports to DIRS are requested in response to Hurricane Helene. Also, effective today, Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules,² which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for new network outages for the area covered by DIRS reporting for Hurricane Helene.³

If there are major changes, whether improvements or setbacks, to the status of communications in the affected area, the Commission asks communications providers to supply that information directly to Commission personnel at the contact information below as events occur. The Commission continues to be available to address emergency communications needs related to Hurricane Helene 24 hours per day, seven days per week through our 24-hour operations center, which can be reached at 202-418-1122 or fccops@fcc.gov. This combination of measures will provide the Commission with the necessary situational awareness as service restoration continues.

¹ While DIRS was initially voluntary, effective April 11, 2024, the Commission's rules were updated to require that certain communications providers, including cable communications, wireless, wireline, and interconnected Voice over Internet Protocol providers, report communications infrastructure status information during times of crisis into DIRS. See 47 CFR 4.18. Compliance with this new requirement by subject communications providers occurs "at the later of (i) 30 days after the Commission issues a Public Notice announcing that [the Office of Management and Budget] has completed review of any new information collection requirements associated with today's Second Report and Order or (ii) November 30, 2024." See *Resilient Networks; Amendments to 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80, ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, para. 36 (2024).

² 47 CFR Part 4.

³ See *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).

The Commission appreciates the cooperation of all the communications providers that submitted data to DIRS in the aftermath of Hurricane Helene. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts. The Commission published its final daily communications status report for Hurricane Helene today, October 19, 2024.

For further information, 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

- FCC -



DA 24-1086

Released: October 19, 2024

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU DEACTIVATES MANDATORY
DISASTER RESPONSE INITIATIVE FOR HURRICANE HELENE AND ANNOUNCES
DEADLINE FOR SUBMISSION OF AFTER-ACTION REPORTS**

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) deactivates the Mandatory Disaster Response Initiative (MDRI)¹ for Hurricane Helene in all remaining counties of Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia for which the MDRI has not been deactivated.² This deactivation occurs at the request of the affected states and in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency.

The Bureau hereby requires facilities-based mobile wireless providers offering service in any of the areas where the MDRI was activated during Hurricane Helene, as listed below, to submit a report to the Commission detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions within 60 days of the Bureau's issuance of this Public Notice (i.e., by December 18, 2024).³ Reports must be submitted via email to MDRI@fcc.gov. Receipt of these reports will allow the Commission to gauge the effectiveness of the MDRI during this disaster.

All Counties Where MDRI Was Activated for Hurricane Helene and Are Subject to Reporting:

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,

¹ During MDRI activations, the Commission's rules require facilities-based mobile wireless providers that offer service to the disaster-affected area to perform, or have established, the following procedures : (1) provide for reasonable roaming under disaster arrangements when technically feasible; (2) establish mutual aid arrangements with other facilities-based mobile wireless providers for providing aid upon request to those providers during emergencies; (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status. 47 CFR § 4.17(a)(3)(i)-(v).

² See *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 (Sept. 25, 2024) (activating the MDRI in Florida, Georgia, North Carolina, and South Carolina); *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 (Sept. 27, 2024) (expanding the MDRI to additional counties in South Carolina, and to counties in Tennessee and Virginia); *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 (Sept. 30, 2024) (deactivating the MDRI in certain counties in Florida and Georgia).

³ See 47 CFR § 4.17(c); *Resilient Networks*, et al., PS Docket Nos. 21-346, 15-80, and ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 8059, 8070-71, para. 32 (2022) (*Resilient Networks R&O and FNPRM*).

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, Tattall, 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, 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 be available to address emergency communications needs related to Hurricane Helene 24 hours per day, seven days per week through our FCC Operations Center, which can be reached at 202-418-1122 or fccopcenter@fcc.gov. For further information concerning this MDRI activation, please contact the FCC Operations Center or the following Bureau staff:

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 -



PUBLIC NOTICE

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DA 24-1087

Released: October 21, 2024

**Media Bureau Announces Federal Register Publication of First Report and
Order in *Modifying Rules for FM Terrestrial Digital Audio Broadcasting
Systems***

MB Docket No. 22-405

On September 25, 2024, the Commission released a *First Report and Order* in this proceeding to allow digital FM radio stations to adopt asymmetric sidebands by notification to the Commission.¹

By this *Public Notice*, the Media Bureau announces that the *FM Digital First R&O* was published in the *Federal Register* on October 21, 2024,² and the *FM Digital First R&O* becomes effective 30 days thereafter, on November 20, 2024. The Bureau notes, however, that only the changes to section 73.310(a) – (b) of the Commission’s rules,³ adding paragraph numbers to the list of definitions in that rule to conform to the publishing conventions of the National Archives and Records Administration’s Office of the Federal Register, and the addition of section 73.402(i),⁴ adding a definition for “asymmetric sideband operation,” will become effective on November 20, 2024.⁵ Changes to the other rules adopted in the *FM Digital First R&O*, specifically changes to sections 73.404 and 73.406,⁶ which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, will become effective on the date specified in a notice published at a later date in the *Federal Register* announcing such approval. The Media Bureau will release a *Public Notice* at that time announcing the effective date of the remaining rule changes.⁷

¹ *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, MB Docket No. 22-405, First Report and Order, FCC 24-105 (rel. Sept. 25, 2024) (*FM Digital First R&O*).

² *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, 89 Fed. Reg. 84096 (Oct. 21, 2024).

³ 47 CFR § 73.310(a) – (b).

⁴ 47 CFR § 73.402(i).

⁵ *FM Digital First R&O* at 11, para. 26.

⁶ 47 CFR §§ 73.404, 73.406.

⁷ *Id.*

For additional information on this proceeding, contact Thomas Nessinger, Thomas.Nessinger@fcc.gov, (202) 418-2709, or James Bradshaw, James.Bradshaw@fcc.gov, (202) 418-2739, of the Media Bureau, Audio Division. Press inquiries should be directed to Nancy Murphy, (202) 418-1043.

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PUBLIC NOTICE

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DA 24-1088
Released: October 21, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ACQUISITION OF CERTAIN ASSETS OF ARISTOTLE UNIFIED COMMUNICATIONS INC BY WISPER ISP, LLC

WC Docket No. 24-219

By this Public Notice, the Wireline Competition Bureau (Bureau) grants 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 to Wisper Aristotle's domestic section 214 authorization for all census blocks in Missouri for which Aristotle has been authorized to receive Connect America Fund (CAF) Phase II support (Assigned Census Blocks).²

On September 20, 2024, the Bureau released a Public Notice seeking comment on the Application.³ The Bureau received one comment in support of the Application, but no opposition.⁴

Applicants and Description of Transaction

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.⁵ Aristotle is a designated Eligible Telecommunications Carrier (ETC) in Missouri and is authorized to receive \$3,001,544.70 in CAF Phase II support to deploy voice and 25/3

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 *Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Aristotle Unified Communications Inc to Wisper ISP, LLC*, WC Docket No. 24-219, Public Notice, DA 24-971 (WCB Sept. 20, 2024).

⁴ Missouri Public Service Commission Comments, WC Docket No. 24-219 (rec. Oct. 3, 2024) (Missouri PSC Comments) (noting its support for the transaction and attaching the order granting Wisper expanded eligible telecommunications carrier designation to serve the Assigned Census Blocks).

⁵ Application at 3-4.

download/upload Mbps broadband service to 788 eligible locations in 293 census blocks in Missouri.⁶

Wisper, a Delaware limited liability company, provides fixed wireless or fiber-based broadband and voice services to approximately 20,000 residential, commercial, and enterprise subscribers in Arkansas, Illinois, Indiana, Kansas, Missouri, and Oklahoma.⁷ 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.⁸ On February 13, 2020, the Bureau authorized Wisper ISP, Inc. (Wisper, Inc.), Wisper's predecessor-in-interest,⁹ a designated ETC in several states, to receive CAF Phase II support of approximately \$220 million (rounded to the nearest million) to serve a total of 80,149 locations in Arkansas, Illinois, Indiana, Kansas, Missouri, and Oklahoma.¹⁰ 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 \$1,069,097.00.¹¹ On September 25, 2024, the state of Missouri granted Wisper expanded ETC designation in order to serve the Assigned Census Blocks.¹² 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

⁶ *Id.* at 4; *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) (*CAF Phase II Public Notice*). We note that Aristotle was separately authorized to receive CAF Phase II support to provide voice and broadband services within the following states: Arkansas (SAC 409046), Illinois (SAC 349041), Mississippi (SAC 289037), and Oklahoma (SAC 439076). Application at 4; *Connect America Fund Phase II Auction Support Authorized for 77 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 4869, 4875, Attach. A (WCB/RBATF 2020).

⁷ Application at 4.

⁸ *Id.* Wisper previously participated in the Affordable Connectivity Program and the Emergency Broadband Benefit program. *Id.*; see also 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).

⁹ On July 10, 2020, Wisper ISP, Inc. converted to Wisper. See Application at 5.

¹⁰ *Id.*; *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). We note that Wisper's support amounts and defined deployment obligations were set on a state-by-state basis. Moreover, Wisper subsequently obtained, for each of five states (Arkansas, Illinois, Indiana, Missouri, and Oklahoma), modifications of its obligations and associated support (on a pro rata basis), pursuant to the Commission's process for resolving potential discrepancies between the number of locations eligible for CAF Phase II support and the number of supported locations. *Connect America Fund et al.*, WC Docket No. 10-90, Order, 38 FCC Rcd 1135, 1142, Attach. (WCB 2023). As a result of these modifications, Wisper's total authorized CAF Phase II support is approximately \$205 million (rounded to the nearest million) and its deployment obligation across all states totals 74,358 locations. See *id.*

¹¹ Application at 6; *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). Wisper also participates in the Lifeline program, the Affordable Connectivity Program, and previously participated in the Emergency Broadband Benefit program and asserts the transaction will not affect Wisper's participation in these programs. Application at 9.

¹² See *Wisper ISP, LLC's Application for Designation as an Eligible Telecommunications Carrier in an Expanded Service Area*, Order Granting Expanded Designation, State of Missouri Public Service Commission, File No. DA-2025-0055 (Sept. 25, 2024), Attach. to Missouri PSC Comments.

limited partnership supported by a substantial investment from the Digital Alpha family of funds,¹³ which focuses on investing in digital infrastructure (40%).¹⁴ E8 Aggregator LP¹⁵ wholly-owns E8 Topco; however, E8 Topco is ultimately controlled by U.S. citizen, Rick Shrotri.¹⁶ No other individual or entity, directly or indirectly, holds 10% or more equity or voting interest in Wisper.¹⁷ Applicants assert there is no overlap in the service areas of Wisper and its affiliates with the Assigned Census Blocks.¹⁸

Pursuant to the terms of the proposed transaction, Wisper agrees to acquire the Assigned Census Blocks and related assets from Aristotle and to assume all associated CAF Phase II obligations.¹⁹ Applicants state that Aristotle will convey to Wisper assets it acquired for the CAF-supported deployment in the Assigned Census Blocks, including engineering plans, equipment and facilities, unexpended CAF Phase II support and the right to receive future CAF Phase II support.²⁰ Moreover Applicants state that, 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-supported and unsupported areas outside the Assigned Census Blocks.²¹ 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.²² In assuming Aristotle's CAF Phase II 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.²³

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.²⁴ We then employ a

¹³ Application at 7, n.12, 14, Exh. A.

¹⁴ *Id.* at 7, 14-15, Exh. A.

¹⁵ E8 Aggregator holds an indirect controlling interest (84.32% voting and 70.34% equity) in two entities that are also providers of broadband internet access services—AtLink Services, LLC (AtLink) and its parent company, Element8 Technology Investment Group, Inc. Sept. 5. Supplement at 1-2. AtLink, a designated ETC in Oklahoma, receives CAF Phase II support and participates in the Lifeline program. *Id.* at 2; *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, Public Notice, AU Docket No. 17-182 and WC Docket No. 10-90, 34 Fcc Rcd 5966, Attach. A. (WCB 2019). Wisper affiliates Digital Alpha Fund II, LP and Digital Alpha Fund II-A, LP, together with two other funds managed by Digital Alpha Advisors, LLC that do not have any ownership interest in Wisper or in AtLink, collectively hold a 28.2% indirect ownership interest in Welink Communications, Inc., a provider of broadband services that holds millimeter wave license WRZA560. Sept. 5 Supplement at 2.

¹⁶ 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.

¹⁷ Application at 15.

¹⁸ *Id.* at 12-13; Sept. 5 Supplement at 2.

¹⁹ Application at 7-8.

²⁰ *Id.* at 8.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *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-

balancing test that weighs any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁵ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²⁶

We find that the record contains no evidence of any potential public interest harms. First, the proposed transaction will not result in a reduction of competition. Applicants contend that there will be no physical overlap or reduction in service providers in any markets as a result of the transaction.²⁷ Applicants attest 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.”²⁸ Further, because Applicants assert that “[n]o carrier change charges will result from the transaction,”²⁹ we expect no potential harm to existing customers to result from the transaction.

Second, Wisper will remain financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of CAF Phase II support, including those obligations assumed as a result of this transaction, and we expect that the proposed transaction will not negatively impact the ability of Wisper to meet all of its CAF Phase II support obligations.³⁰ Applicants maintain that “Wisper has both the necessary industry experience and requisite financial means to take on the responsibility of timely deploying CAF-supported services in the Assigned Census Blocks.”³¹ Indeed, Applicants note Wisper’s “strong track record of successfully executing organic expansion and meeting CAF obligations, including in rural areas of Missouri with similar topography and demography as the

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*)).

²⁵ 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).

²⁶ 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).

²⁷ Application at 12-13.

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ See *id.* at 8-12; see also Sept. 5 Supplement at 2-4. Applicants assert that Wisper has provided to the Commission, pursuant to its application processes for the receipt of high cost support, financial, technical, and operational information explaining how Wisper plans to meet CAF Phase II and Rural Digital Opportunity Fund (RDOF) program obligations, that Wisper has been authorized to receive CAF and RDOF support, and that this transaction, and the associated assumption of new CAF Phase II obligations, does not change Wisper’s qualifications. Application at 2, 11.

³¹ *Id.* at 10; see *id.* at 12 (noting Wisper’s “extensive experience in the telecommunications industry, its qualifications as a CAF and RDOF recipient, its access to capital, and the efficiencies of deploying service in the Assigned Census Blocks in close proximity to Wisper’s existing network and high-cost locations”).

Assigned Census Blocks.”³² Applicants state that Wisper does not plan to make material changes to Aristotle’s CAF Phase II deployment plans; however, “to ensure full coverage and optimal service, Wisper intends to deploy Tarana CBRS Base Nodes in place of Cambium 450 Base Nodes originally planned by Aristotle.”³³ Moreover, Applicants assert that it is “better suited to assume the CAF obligations in the Assigned Census Blocks than Aristotle, a smaller company based in Arkansas”³⁴ as Wisper “has significant fixed wireless facilities and leased fiber backhaul proximate to the Assigned Census Blocks such that it can readily deploy CAF-supported facilities.”³⁵ Applicants also contend that because the Assigned Census Blocks “comprise about one percent of Wisper’s CAF locations, adding the Assigned Census Blocks to Wisper’s Missouri CAF SAC will not in any way impair Wisper’s ability to meet its CAF deployment obligations.”³⁶ Finally, Applicants assert that Wisper “will not be assuming any debt in connection with the transaction.”³⁷ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.³⁸ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.³⁹ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.⁴⁰

Applicants argue that because of the “proximity of Wisper’s extensive Missouri CAF and RDOF locations and the Assigned Census Blocks, Wisper will realize economies of scale and will be able to leverage its work force and materials, thereby lowering deployment costs and accelerating buildout of supported services.”⁴¹ Further, Applicants assert that “Wisper plans to upgrade the network Aristotle planned to deploy with faster broadband speeds and more reliable equipment.”⁴² Thus, Applicants contend that the transaction “will benefit customers by providing additional resources and support to improve existing infrastructure and deploy additional services.”⁴³

The Commission has specified that a transaction ensuring consumers receive new or additional services is an important public interest factor,⁴⁴ and accelerating private sector deployment of advanced services is one of the aims of the Act.⁴⁵ In light of Wisper’s commitments to meet all of Aristotle’s

³² *Id.* at 10 (explaining Wisper has conducted an extensive investigation of the Assigned Census Blocks to determine its capabilities in complying with CAF requirements).

³³ Sept. 5 Supplement at 4.

³⁴ Application at 11.

³⁵ *Id.* at 10.

³⁶ *Id.* at 8.

³⁷ *Id.* at 9-12.

³⁸ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

³⁹ See *id.* at 9237-38, paras. 275-76.

⁴⁰ See *id.*

⁴¹ Application at 3.

⁴² *Id.* at 9; *id.* at 3,8 (noting Wisper plans to deploy facilities capable of offering at least 400/30 Mbps service using equipment manufactured by Tarana Wireless).

⁴³ *Id.* at 3.

⁴⁴ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

⁴⁵ 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

federal high cost funding obligations for the transferring assets⁴⁶ and the fact that Wisper is prepared to devote additional capital to accelerate facilities-based service offerings,⁴⁷ 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.

Conditional Authorization of CAF Phase II Support

As stated above, we have found that Wisper has demonstrated the 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 Wisper to receive the CAF Phase II support to be transferred to it as part of this transaction. This authorization is conditioned upon 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. 24-219 and WC Docket No. 10-90. Applicants should also email a copy of the notice of consummation directly to Megan Danner at megan.danner@fcc.gov, to Nissa Laughner at nissa.laughner@fcc.gov, and to USAC at hcinfo@usac.org and OGC-LOC@usac.org. Wisper should submit the LOC and the supporting Bankruptcy Opinion Letter directly to USAC for review and approval.

If and when Wisper satisfies all of these prerequisites, it will be authorized to receive the CAF Phase II support.⁴⁸ Once Wisper 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 Wisper is authorized, Aristotle 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 related assets associated with the supported area must be transferred from Aristotle to Wisper, including any support disbursements received by Aristotle, as of the effective date of the authorization.

We remind Wisper 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 has been authorized to receive and pursuant to its status as an ETC, 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.⁴⁹ 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

“accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

⁴⁶ Application at 8-12; Sept. 5 Supplement at 2-4.

⁴⁷ Application at 9-12.

⁴⁸ 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. 24-219 and 10-90. If Wisper 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.

⁴⁹ 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).

potential forfeiture penalties.⁵⁰ Finally, Wisper 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.⁵¹

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 requirements and obligations.⁵²

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.⁵³ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Megan Danner, Wireline Competition Bureau, Competition Policy Division, (202) 418-1151.

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⁵⁰ 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.").

⁵¹ See *CAF Phase II Public Notice*, 34 FCC Rcd at 5967-72 (providing a non-exhaustive listing of the obligations and requirements applicable to all CAF Phase II authorized support recipients).

⁵² See *id.*

⁵³ We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 24-219 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

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

In the Matter of	)	
	)	
AT&T, Inc.	)	File Nos.: EB-FD-24-00036845;
	)	EB-IHD-24-00036187
	)	CD Acct. No.: 202532200001
	)	FRN: 0004979233
	)	

ORDER

Adopted: October 25, 2024**Released: October 25, 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 investigations into whether AT&T, Inc. (AT&T) violated the Commission's Emergency Broadband Benefit Program (EBB) and Affordable Connectivity Program (ACP) (collectively Programs) rules.¹ To settle these matters, AT&T agrees to a total settlement value of \$2,299,990 to fully resolve the Bureau's investigations,² which includes (i) a civil penalty of \$1,921,068, and (ii) repayment to the United States Treasury in the amount of \$378,922. AT&T also agrees to implement enhanced compliance measures in connection with its participation in a re-funded ACP or successor program. The FCC's rules governing the EBB and ACP³ are vital to protecting these Programs and their resources from waste, fraud, and abuse.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the associated investigations into AT&T's compliance with the EBB and ACP rules.

3. 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.⁴

4. Accordingly, **IT IS ORDERED** that, pursuant to the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

¹ See 47 CFR §§ 54.1600-54.1612 (2021) and 47 CFR §§ 54.1800-54.1812 (2022).

² The Consent Decree resolves investigations commenced by the Bureau in File Numbers EB-FD-22-00033152, EB-FD-24-00036845, and EB-IHD-24-00036817.

³ See 47 CFR §§ 54.1600-54.1612 (2021) and 47 CFR §§ 54.1800-54.1812 (2022).

⁴ See *id.* § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested to Angela DeMahy, Director, Federal Regulatory, External & Legislative Affairs Organization, AT&T Services, Inc., 601 New Jersey Ave NW, Suite 650, Washington, DC 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, Inc.	)	File Nos.: EB-FD-24-00036845;
	)	EB-IHD-24-00036187
	)	CD Acct. No.: 202532200001
	)	FRN: 0004979233
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and AT&T, Inc. (AT&T), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether AT&T violated the Commission's Emergency Benefit Broadband Program and Affordable Connectivity Program rules. To resolve this matter, AT&T agrees to implement a compliance plan and pay a total settlement amount of \$2,299,990, including: (i) a \$378,922 repayment; and (ii) a \$1,921,068 civil penalty.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "ACP" means the Affordable Connectivity Program established by the Infrastructure Investment and Jobs Act
 - (b) ¹ and subject to the ACP Rules, and any successor and/or similar program providing broadband benefits to eligible households as established by the Commission.
 - (c) "ACP Rules" means the Commission's rules at Title 47, Code of Federal Regulations, sections 54.1800-54.1814, section 1752 of the Infrastructure Investment and Jobs Act, and Commission orders related to ACP, and as they may be amended, and the rules of any successor and/or similar program providing broadband benefits to eligible households as established by the Commission.
 - (d) "Act" means the Communications Act of 1934, as amended.²
 - (e) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (f) "AT&T" or "Company" means AT&T, Inc. and its subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (g) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (h) "CD Acct. No." means account number 202532200001, associated with payment obligations described in paragraph 23 of this Consent Decree.
 - (i) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

¹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act).

² 47 U.S.C. § 151 *et seq.*

- (j) “Communications Laws” means collectively, the Act, the Commission’s 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 EBB Rules and ACP Rules.
- (k) “Compliance Obligations” shall mean those obligations undertaken by AT&T pursuant to paragraphs 14 through 20 of this Consent Decree.
- (l) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraphs 14 through 20.
- (m) “Covered Employees” means all employees of AT&T who perform, supervise, oversee, or manage the performance of duties that relate to AT&T’s responsibilities under the ACP Rules.
- (n) “Covered Personnel” or “Covered Person” means all employees and officers of AT&T or any employees or officers of Covered Third Parties who perform, supervise, oversee, or manage the performance of duties that relate to the ACP Rules and AT&T’s participation in the ACP. For purposes of paragraph 16 (Compliance Manual) and paragraph 17 (Compliance Training Program), Covered Personnel shall also include any personnel used by any Covered Third Party to perform these activities, regardless of whether such personnel are designated as independent contractors, third party agents, or have some other status for a Covered Third Party conducting these activities for AT&T.
- (o) “Covered Third Party” or “Covered Third Parties” means any entity that has entered into a contractual relationship or agreement with AT&T to perform services involving the enrollment and de-enrollment of ACP consumers, or any duties that relate to ACP eligibility and de-enrollment rules.
- (p) “EBB” means the Emergency Broadband Benefit Program established by the Consolidated Appropriations Act of 2021³ and subject to the EBB Rules.
- (q) “EBB Rules” means the Commission’s rules at Title 47, Code of Federal Regulations, sections 54.1600-54.1612, section 904 of the Consolidated Appropriations Act of 2021, and Commission orders related to EBB.
- (r) “Effective Date” means the date by which both the Bureau and AT&T have signed the Consent Decree and the Bureau has released an Adopting Order.
- (s) “Investigation” means the investigations commenced by the Bureau in File Nos. EB-FD-22-00033152, EB-FD-24-00036845, and EB-IHD-24-00036187 regarding whether AT&T violated EBB and ACP Rules.
- (t) “Operating Procedures” means the written internal operating procedures and compliance policies established by AT&T to implement the Compliance Plan.
- (u) “Participates in ACP” or “Participating in ACP” means Covered Personnel are enrolling AT&T subscribers in ACP or a successor program and/or transferring the ACP or a successor program benefit to AT&T subscribers.
- (v) “Parties” means AT&T and the Bureau, each of which is a “Party.”
- (w) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund (USF) and the universal service programs, and also administered EBB and ACP.

³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752).

(x) “USF” means the federal Universal Service Fund.

II. BACKGROUND

3. EBB was established by the Commission on February 25, 2021,⁴ at the direction of Congress through the Consolidated Appropriations Act of 2021.⁵ The purpose of the program was to facilitate the provision of broadband services and devices to eligible households⁶ so that they could stay connected during the COVID-19 pandemic. Efforts to slow the spread of COVID-19 resulted in the closure of businesses and schools across the country for extended periods, which in turn caused millions of Americans to become newly unemployed or unable to find work. In addition, these closures caused Americans to turn to virtual learning, telemedicine, and telework, which increased every household’s need for access to broadband services. The cost of broadband services, however, is a barrier to access for many families, and the support provided by EBB was designed to alleviate some of that burden.⁷ By the end of 2021, more than nine million American households had benefited from EBB subsidies for broadband services and connected devices,⁸ including students accessing virtual classrooms, adults working remotely, and people providing and receiving critical healthcare services.⁹

4. Congress, through the Infrastructure Investment and Jobs Act (Infrastructure Act),¹⁰ built upon EBB by appropriating new funding for ACP to provide discounted broadband service and connected devices to low-income households. Pursuant to the Infrastructure Act, the EBB ended and the ACP began. To ensure the integrity and effectiveness of EBB, and then ACP, Congress and the Commission authored a regulatory framework that imposed responsibilities and obligations on participating service

⁴ 47 CFR §§ 54.1600-54.1612; *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612 (2021) (*Emergency Broadband Benefit Program Order*).

⁵ Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752 (2020)), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

⁶ See Consolidated Appropriations Act, § 904(a)(6); 47 CFR § 54.1605(a). The Consolidated Appropriations Act directed, and our rules provide, that a household would be eligible for the Emergency Broadband Benefit if at least one member of the household: (i) met the qualifications for participation in the Lifeline Program (household income is at or below 135% of the federal poverty guidelines or a household member participated in the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, Federal Public Housing Assistance, Veterans Pension/Survivors Benefit, or certain Tribal assistance programs); (ii) applied for and been approved to receive benefits under the free and reduced price lunch program or the school breakfast program; (iii) experienced a substantial loss of income since February 29, 2020 that was documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable; (iv) received a Federal Pell Grant in the current award year; or (v) met the eligibility criteria for a participating service provider’s existing low-income or COVID-19 program, subject to approval by the Commission. 47 CFR § 54.1605(a). To receive the EBB benefit, the rules make clear that no member of a household could have already been receiving an EBB benefit. 47 CFR § 54.1605(b); *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4635-38, paras. 50 and 54; Consolidated Appropriations Act, § 904(a)(6), (b)(2). The National Verifier was used in EBB and was available for use in the successor ACP to automatically check and confirm a household’s eligibility electronically against state and federal eligibility databases, followed by manual review of eligibility documentation for applicants whose eligibility cannot be verified using an automated data source.

⁷ See *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 1.

⁸ See Universal Service Administrative Co., About, Emergency Broadband Benefit Program, Emergency Broadband Benefit Program Enrollments and Claims Tracker, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Oct. 21, 2024).

⁹ See Fed. Comm’n Comm’n, Home, Consumer, Emergency Broadband Benefit, <https://www.fcc.gov/broadbandbenefit> (last visited Oct. 21, 2024).

¹⁰ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf>; see also *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022) (*Affordable Connectivity Program Order*).

providers, including requiring service providers to determine a customer's eligibility to participate in these programs prior to enrolling the customer for service.¹¹ By February 2024, more than 23 million American households were enrolled in ACP.¹²

5. First, from at least May 2021 through December 2023, AT&T sought and received EBB or ACP funding for subscribers that were improperly enrolled in the programs. The Company enrolled 3,912 subscribers with incorrect and/or invalid identifying information by repeatedly using the same non-subscriber benefit qualifying persons (BQP)¹³ to enroll multiple subscribers. Despite these improper duplicate BQPs, AT&T certified in its reimbursement requests¹⁴ to the FCC and USAC that it was in compliance with the Commission's rules. These certifications were made under penalty of perjury and resulted in AT&T receiving funding from EBB and ACP.

6. Second, from at least May 2021 through November 2023, 21 AT&T in-store sales representatives were associated with EBB and ACP enrollments for at least 220 subscribers that included incorrect and/or invalid BQP and customer email address information. Each of these 21 sales representatives did not obtain a unique Representative Accountability Database identification number (RAD ID). The EBB and ACP Rules require enrollment representatives to obtain a RAD ID before providing information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.¹⁵ Despite the RAD ID requirement, AT&T certified in its reimbursement requests¹⁶ to the FCC and USAC that it was in compliance with the Commission's rules; based on these certifications made under penalty of perjury, AT&T received funding from EBB and ACP.

7. Third, service providers that do not assess and collect a monthly fee after applying the ACP benefit may only receive reimbursement for offering the ACP benefit when the subscriber has used the service at least once every 30 days, or has cured their non-usage during a subsequent 15-day cure period.¹⁷ In October and November 2023, AT&T claimed reimbursement for 3,289 ACP subscribers despite those subscribers having more than 45 consecutive days of non-usage of the service. Despite these subscribers having no usage, AT&T certified in its reimbursement requests¹⁸ to the FCC and USAC

¹¹ 47 CFR §§ 54.1800-54.1814.

¹² See Universal Service Administrative Co., About, Affordable Connectivity Program, ACP Enrollment and Claims Tracker, <https://usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Oct. 9, 2024).

¹³ Generally, a benefit qualifying person is the member of the household who meets the requirements to receive EBB or ACP benefits. In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant, often times a dependent child. See 47 CFR § 54.1800(j), (l); *Emergency Broadband Benefit Program Order*, *supra* note 4, at 4643-45, paras. 66, 68 and n.222; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, Public Notice, 37 FCC Rcd 10211 (WCB 2022); Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), <https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud>.

¹⁴ See 47 CFR §§ 54.1608, 54.1808.

¹⁵ See *id.* §§ 54.1607, 54.1807.

¹⁶ See *id.* §§ 54.1608, 54.1808.

¹⁷ Usage is defined as: (i) completion of an outbound call or usage of data; (ii) purchase of minutes or data from the eligible telecommunications carrier; (iii) answering an incoming call from a party other than the eligible telecommunications carrier; (iv) responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or (v) sending a text message. See 47 CFR § 54.407(c). The non-usage rules apply to ACP service that does not require the participating provider to assess and collect a monthly fee from its subscribers. See 47 CFR §§ 54.1808(c), 54.1809(c).

¹⁸ See *id.* § 54.1808.

that it was in compliance with the Commission's rules; based on these certifications made under penalty of perjury, AT&T received funding from ACP.

8. To resolve these matters, AT&T and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

10. **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.

11. **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. Any violation of the Adopting Order or of 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 the enforcement of a Commission order.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, 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's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹⁹ This Consent Decree does not terminate any other investigations or matters that have been or might be conducted by other law enforcement agencies or offices.

13. **Admissions.** 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 12 herein, that paragraphs 5 through 7 contain a true and accurate description of the facts underlying the Investigation. No other admissions are made by AT&T.

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, AT&T will 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, including oversight of Covered Third Parties. 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 ACP Rules (as defined above, to include any successor or similar program established by the Commission in which AT&T participates) prior to assuming his/her duties.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, AT&T agrees that it shall, within seventy-five (75) calendar days after the Effective Date, or seventy-five (75) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, develop and implement a Compliance Plan designed to ensure future compliance with the ACP Rules and with the terms and conditions of this Consent Decree. AT&T may use a combination

¹⁹ See *id.* § 1.93(b).

of any existing and/or new measures and processes to ensure future compliance, but, at a minimum, the Compliance Plan will have the following:

- a. **Operating Procedures.** Within seventy-five (75) calendar days after the Effective Date, or seventy-five (75) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, AT&T shall establish written Operating Procedures approved by the Compliance Officer that all Covered Employees must follow to help ensure AT&T's compliance with the ACP Rules. AT&T's Operating Procedures shall include written internal procedures and policies specifically designed to ensure that it meets all ACP Rules and the directions and guidance of all Commission and USAC advisories relating to the ACP. AT&T shall also develop a written Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the ACP Rules (AT&T may develop separate Compliance Checklists for separate functions). AT&T shall periodically, but not less than annually, review and revise the written Operating Procedures and Compliance Checklist(s) as necessary to ensure they effectively address current operations and Commission rules and guidance.
 - b. **Oversight of Covered Third Parties.** Within seventy-five (75) calendar days after the Effective Date, or seventy-five (75) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, AT&T shall develop ACP policies and procedures for monitoring Covered Third Parties for compliance with the ACP Rules.
16. **Compliance Manual.** Within ninety (90) days after the Effective Date, or ninety (90) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, the Compliance Officer shall develop and, to the extent consistent with applicable law, distribute electronically or in hard copy a Compliance Manual to all Covered Employees and Covered Third Parties. The Compliance Manual shall explain the ACP Rules, set forth the Operating Procedures that Covered Employees and Covered Third Parties shall follow to help ensure AT&T's compliance with the ACP Rules, and include the information described in subsection (b) of this section. The phone numbers for the AT&T Compliance Hotline, the Commission's whistleblower hotline, and the USAC whistleblower hotline shall be displayed in a prominent location in the Compliance Manual. AT&T shall periodically review and revise the Compliance Manual as necessary to ensure that its contents remain current and accurate. To the extent consistent with applicable law, AT&T shall distribute electronically any revisions to the Compliance Manual promptly to all Covered Employees and Covered Third Parties.
- a. Any agreements entered into between AT&T and Covered Third Parties while AT&T is Participating in ACP or a successor program shall contain provisions obligating Covered Third Parties to comply with the Compliance Plan. AT&T shall use commercially reasonable efforts to modify agreements between AT&T and Covered Third Parties that are in effect on the Effective Date, or the date requirements for a re-funded ACP or successor program go into effect, whichever is later.
 - b. To the extent consistent with applicable law, AT&T shall require that the Compliance Manual contain the following:
 - i. AT&T will timely pursue appropriate remedies, including contractual remedies and, if necessary and consistent with the severity of the violation, suspension or termination of its relationship with Covered Third Parties who are suspected (based on credible evidence) of violating ACP Rules or failing to comply with the terms of the Company's Compliance Manual.
 - ii. Covered Personnel employed by Covered Third Parties who are suspected (based on credible evidence) of violating ACP Rules or failing to comply with the terms of the Company's Compliance Manual will have access to AT&T's systems suspended or terminated. Covered Employees who are suspected (based on

credible evidence) of violating ACP Rules or failing to comply with the terms of the Company's Compliance Manual shall be subject to appropriate disciplinary action by AT&T.

iii. Covered Third Parties or their Covered Personnel and Covered Employees who become aware of any known, suspected, or alleged fraud or noncompliance with ACP Rules are required to promptly report such suspicions to the AT&T Compliance Hotline, the Commission's whistleblower hotline, or to the USAC whistleblower hotline.

iv. Covered Personnel employed by Covered Third Parties, as well as any other enrollment representatives or their direct supervisors (whether acting as employees or agents of the Covered Third Party) that perform any activities relating to AT&T's participation in the ACP, will receive the training described in paragraph 17.

17. **Compliance Training Program.** AT&T shall establish and implement a Compliance Training Program on compliance with the ACP Rules and the Operating Procedures, and the Compliance Checklists. As part of the Compliance Training Program, Covered Employees shall be advised of AT&T's obligation under paragraph 19 to report any material noncompliance with the ACP Rules or with the terms of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred and twenty (120) calendar days after the Effective Date, or within one hundred and twenty (120) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within one hundred and twenty (120) calendar days after the date such person becomes a Covered Employee. AT&T shall repeat compliance training on an annual basis, and shall periodically, not less than annually, review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness. According to AT&T's applicable retention and security policies, AT&T shall securely retain documentation that Covered Employees have completed their training. AT&T will make copies of ACP compliance training materials available for inspection upon the FCC's request.

- a. For those Covered Personnel who are employees or officers of Covered Third Parties (or their contractors, third party agents, or other individuals or entities working on their behalf), the training shall be substantially similar to that provided to AT&T employees with similar responsibilities and shall include the Compliance Manual. According to AT&T's applicable retention and security policies, AT&T shall collect and securely retain documentation for each Covered Person who has completed training.
- b. In addition to general training on the ACP Rules, training should cover, as relevant for the Covered Personnel's job function, ACP Household Worksheets and duplicate removal; benefit transfer rules; subscriber termination and de-enrollment; subscriber non-usage; Covered Third Party oversight; ACP eligibility compliance; and detection and de-enrollment of ineligible subscribers from the program.
- c. All Covered Personnel shall receive training within one hundred and twenty (120) calendar days of the Effective Date, or one hundred and twenty (120) calendar days after requirements for a re-funded ACP or successor program go into effect, whichever is later, except that a person who becomes a Covered Person at any time after the initial Compliance Training Program shall be trained within one hundred and twenty (120) calendar days after the date such person becomes Covered Personnel. AT&T shall periodically review and revise the Compliance Training Program for Covered Personnel as necessary to ensure that it remains current and complete and to enhance its effectiveness.

18. **Fraud and Noncompliance Detection and Monitoring.**

- a. Within one hundred twenty (120) days after the Effective Date, or one hundred twenty (120) calendar days after FCC regulations implementing a re-funded ACP or successor program go into effect, whichever is later, AT&T's Compliance Officer shall:
- i. Establish a program of periodic "spot checks" to ensure that Covered Third Parties are complying with all their obligations.
 - ii. Investigate promptly potential fraud or other irregularities based upon customer complaints, complaints by Covered Third Parties, information obtained through the "spot checks," or any other credible information, including complaints to the AT&T Compliance Hotline.
 - iii. Investigate potential irregularities or fraud based on reports or anomalies such as (a) high velocity reports showing unusually high numbers of enrollments by particular Covered Third parties; (b) service not requested reports; and (c) multiple parties at the same address reports.
 - iv. According to AT&T's applicable retention and security policies, AT&T shall securely maintain a list of Covered Employees terminated by AT&T or employees of Covered Third Parties to whom AT&T disabled access to AT&T's systems for known, alleged, or suspected fraud or noncompliance, the nature of such fraud or noncompliance, and the amount or estimated amounts of ACP disbursements to AT&T attributable to such fraud or noncompliance.

19. **Reporting Noncompliance.** AT&T shall report any material noncompliance with the ACP Rules or with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. In complex cases that require additional investigation, AT&T may seek up to an additional thirty (30) calendar days, which shall not be unreasonably denied, to make such a report. In determining whether such noncompliance is material, any close calls will be resolved in favor of reporting. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that AT&T has taken or will take to remedy such material noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the 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 Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, and Patrick McGrath, Chief, Investigations and Hearings Division, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or their respective successors or designees, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov, Jodie.Griffin@fcc.gov, Bryan.Boyle@fcc.gov, Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, and Georgina.Feigen@fcc.gov. To the extent any such report includes personally identifiable information about Covered Employees/Personnel, the report shall be so marked or designated and shall be submitted using secure file transfer as directed by the Bureau.

20. **Compliance Reports.** AT&T shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, and twelve (12) months after the Effective Date.

- a. Each Compliance Report shall include a detailed description of AT&T's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the ACP Rules. 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; (ii) has utilized the written Operating Procedures 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 19 of this Consent Decree.

- b. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Commission's rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²⁰
- 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 that AT&T has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- d. All Compliance Reports shall be submitted to Meghan Ingrisano, Chief, Fraud Division, and Patrick McGrath, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or their respective successors or designees, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov, Patrick.McGrath@fcc.gov, Jodie.Griffin@fcc.gov, Bryan.Boyle@fcc.gov, Kalun.Lee@fcc.gov, and Georgina.Feigen@fcc.gov.
- e. To the extent that AT&T is not Participating in ACP or a successor program, it shall indicate as much to the contacts in paragraph (d) in lieu of the requirements in paragraphs (a) – (d).
21. The requirements set forth in paragraphs 15-20 of this Consent Decree only apply to the extent that AT&T Participates in ACP and/or a successor program after the Effective Date.
22. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 14 through 20 of this Consent Decree shall expire twelve (12) months after the Effective Date. If AT&T does not materially comply with the Compliance Obligations and all ACP Rules, as reasonably determined by the FCC, during the twelve (12) month period after the Effective Date, the obligations set forth herein may be extended, in the discretion of the FCC, by an additional twelve (12) months.
23. **Settlement Amount.** AT&T will pay a settlement amount to the United States Treasury in the amount of two million two hundred and ninety nine thousand nine hundred ninety dollars (\$2,299,990) within thirty (30) calendar days of the Effective Date, which includes:
- (i) a Civil Penalty of \$1,921,068; and
 - (ii) a Repayment to EBB and ACP of \$378,922.

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).²¹ 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 Meghan.Ingrisano@fcc.gov, Patrick.McGrath@fcc.gov, and Kalun.Lee@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²²

- 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)

²⁰ 47 CFR § 1.16.

²¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

captioned above and the letters “FORF”. In addition, a completed Form 159²³ or printed CORES form²⁴ 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).²⁵ 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.

24. **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.

25. **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.

26. **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

²³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁴ 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>.

²⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Act²⁶ relating to the matters addressed in this Consent Decree.

27. **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.

28. **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.

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

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

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

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

33. **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.

34. **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.

²⁶ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

35. **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

Caleb Deerinwater
Senior Vice President – Commercialization & Operations
AT&T, Inc.

Date



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 24-1090

Released: October 22, 2024

**INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY
TDS BROADBAND SERVICE, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE
COMMISSION'S RULES**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-156¹

Comments Due: November 6, 2024

TDS Broadband Service, LLC (TDS Broadband Service 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, TDS Broadband Service indicates that it intends to initially request numbers in Nebraska but seeks authority to access numbering resources in the state of Oregon.³

In its Application, TDS Broadband Service includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.⁴ TDS Broadband Service provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.⁵ TDS Broadband Service also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).⁶ In addition, TDS Broadband Service certifies that it has the financial, managerial, and technical expertise to provide reliable service.⁷ TDS Broadband Service further certifies that none of its key management and technical personnel are

¹ We assign WC Docket No. 24-156 for this Application and all related filings by the applicant and interested parties. See *Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

² See Application of TDS Broadband Service for Authorization to Obtain Numbering Resources, WC Docket No. 24-156 (filed May 17, 2024), <https://www.fcc.gov/ecfs/document/105171324222369/1>; Supplement to TDS Broadband Service Application, WC Docket No. 24-156 (filed Oct. 1, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1001928723782>; see also 47 CFR § 52.15(g)(3).

³ Application at 1; 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 1-3, 4; see 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

⁵ Application at 3; see 47 CFR § 52.15(g)(3)(i)(D).

⁶ Application at 3; see 47 CFR § 52.15(g)(3)(i)(E); see also *id.* §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); *id.* pts. 9 and 54, subpt. H.

⁷ Application at 4; see 47 CFR § 52.15(g)(3)(i)(F).

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 TDS Broadband Service 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

Error! Reference source not found. TDS Broadband Service also certifies that it will not use the numbers obtained pursuant to the authorization for illegal robocalling, illegal spoofing, or otherwise fraudulent purposes.¹⁰ TDS Broadband Service **Error! Reference source not found.** certifies that it has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements.¹¹ TDS Broadband Service certifies that it complies with the Commission's Access Stimulation rules.¹² TDS Broadband Service provides evidence it is compliant with FCC Form 499, FCC Form 477, and Broadband Data Collection filing requirements.¹³ TDS Broadband Service makes the necessary ownership disclosures and certifications as required under 47 CFR §§ 63.18(h) and (i).¹⁴ Finally, TDS Broadband Service 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.
 - 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,

⁸ Application at 4; *see* 47 CFR § 52.15(g)(3)(i)(F).

⁹ Application at 4; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

¹⁰ Supplement at 2; *see* 47 CFR § 52.15(g)(3)(ii)(C).

¹¹ Supplement at 2; *see* 47 CFR § 52.15(g)(3)(ii)(D).

¹² Supplement at 2; *see* 47 CFR § 52.15(g)(3)(ii)(F).

¹³ Supplement at 2; Supplement, Exh. B; *see* 47 CFR § 52.15(g)(3)(ii)(I).

¹⁴ Supplement at 2-3; Supplement, Exh. C; *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, Exh. D; *see* 47 CFR § 52.15(g)(3)(ii)(N).

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.

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

¹⁶ 47 C.F.R. §§ 1.1200 *et seq.*

¹⁷ See 47 CFR § 1.45(c).

to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

- FCC -

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

In the Matter of	)	
	)	
Application of T-Mobile US, Inc., Nextel West	)	ULS File No. 0010923038
Corp., and LB License Co, LLC for License	)	
Assignment	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 22, 2024

Released: October 22, 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 application filed by LB License Co, LLC (LB License), T-Mobile US, Inc. (T-Mobile US), and T-Mobile US's wholly owned indirect subsidiary, Nextel West Corp. (Nextel West, and together with T-Mobile US, T-Mobile) (collectively, the Applicants),¹ to assign certain 600 MHz spectrum licenses from LB License to T-Mobile.²

¹ The Applicants filed the spectrum license assignment application on Feb. 16, 2024. *See* Application of T-Mobile US, Inc., Nextel West Corp., and LB License Co, LLC for License Assignment, ULS File No. 0010923038 (filed Feb. 16, 2023) (T-Mobile/LB License Application).

² T-Mobile currently leases from LB License certain spectrum associated with LB License's 600 MHz licenses. *See Application of T-Mobile License LLC and Channel 51 License Company LLC for Spectrum Manager Lease Arrangement; Application of T-Mobile License LLC and LB License Co, LLC for Spectrum Manager Lease* (continued....)

2. After carefully evaluating the potential competitive effects of the proposed assignment, we find that the likelihood of competitive harm is low. As we have stated previously, we emphasize that the Commission's screen is not a hard cap on a company's holdings, but rather a trigger for further competitive analysis regarding the impact of a proposed transaction on the market for wireless services.³ T-Mobile has been leasing this spectrum since 2020, and as we explain below, we do not find that current competitive conditions in the markets subject to the instant transaction warrant spectrum divestitures or any other remedies. In addition, we find that some public interest benefits are likely to be realized, such as the continued 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) fails to provide a sufficient basis for denying the application.⁴ We find that the proposed assignment of these 600 MHz licenses would serve the public interest, convenience, and necessity and therefore we consent to the application.

II. BACKGROUND

A. Description of the Applicants

1. T-Mobile

3. Nextel West is a wholly owned subsidiary of T-Mobile USA, Inc. and, indirectly, T-Mobile US, a publicly traded Delaware corporation controlled by Deutsche Telekom AG (Deutsche Telekom).⁵ T-Mobile US and its subsidiaries offer nationwide wireless voice and data services to consumer and business customers and 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 reported 2023 total revenues of approximately \$78.6 billion, with an operating income of approximately \$14.3 billion.⁷

(Continued from previous page) _____

Arrangement, ULS File Nos. 0009021213, 0009021220, Order on Reconsideration, 35 FCC Rcd 14059 (WTB 2020) (*T-Mobile-Channel 51-LB License Lease Order*).

³ See, e.g., *Applications of Liberty America Ltd. And DISH Network Corporation for Consent to Assignment of Spectrum Licenses, Assets, and Customers of DISH Network Corporation to Liberty Latin America Ltd. in Puerto Rico and the U.S. Virgin Islands*, GN Docket No. 24-55, Memorandum Opinion and Order and Declaratory Ruling, DA 24-783, at 2, para. 2 (OIA/WTB Aug. 9, 2024) (*Liberty Latin America-DISH Order*); *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, 0010168439, Memorandum Opinion and Order, 38 FCC Rcd 12150, 12151, para. 2 (WTB/OEA 2023) (*T-Mobile-Channel 51-LB License Assignment 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, 10614, para. 87 (2019) (*T-Mobile-Sprint Order*).

⁴ Petition to Deny of EchoStar Corporation, ULS File No. 0010923038 (filed Apr. 10, 2024) (EchoStar Petition to Deny).

⁵ T-Mobile/LB License Public Interest Statement at 1.

⁶ T-Mobile US, Inc., SEC Form 10-K, at 5-6 (filed Feb. 2, 2024) (service revenues generated by 77% postpaid customers, 15% prepaid customers, and 8% wholesale, roaming, and other services); see also T-Mobile/LB License Public Interest Statement at 1.

⁷ T-Mobile US, Inc., SEC Form 10-K, at 34 (filed Feb. 2, 2024).

2. LB License

4. LB License is a wholly owned direct subsidiary of LB Spectrum Holdings, LLC (LB Spectrum Holdings), which is indirectly controlled by LB Spectrum Holdings' board of directors.⁸ The indirect equity and voting rights of LB License are dispersed among a number of entities, including several Columbia entities (Columbia Spectrum Partners II-A, L.P.; Columbia Spectrum Partners II GP, L.P.; and Columbia Spectrum II, LLC) and Future Fund entities (Future Fund Investment Co. No. 5 Pty Ltd; Future Fund Board of Guardians).⁹

B. Description of the Transaction

5. On August 8, 2022, LB License and T-Mobile US entered into a license purchase agreement, pursuant to which certain 600 MHz licenses held by LB License would be assigned to Nextel West.¹⁰ In the proposed transaction, T-Mobile would acquire 30 megahertz of spectrum in 12 counties in all or parts of two Cellular Market Areas (CMAs).¹¹ Post-transaction, in markets where there is geographical overlap, T-Mobile would hold 386.5 to 450 megahertz of spectrum covering approximately 8 million people, or approximately 2% of the population of the United States, excluding the territories.¹² As noted above, the licenses that are subject to the proposed transaction were previously leased to T-Mobile by LB License through long-term spectrum manager leasing arrangements.¹³ As such, T-Mobile is already attributed with the spectrum, and T-Mobile currently provides service using this 600 MHz spectrum.¹⁴

6. The Applicants assert that approval of the proposed transaction will promote the public interest. The Applicants claim that consent to this transaction will result in the preservation and enhanced deployment of 5G wireless broadband services in the Dallas, TX Partial Economic Area (PEA).¹⁵ The Applicants maintain that since T-Mobile has held this spectrum since 2020 in accordance with long-term spectrum manager leasing arrangements, the public interest benefits are readily verifiable, including enhanced competition and consumer benefits, promoting the rapid buildout of 5G, and enhancing network capacity, coverage, speeds, and performance.¹⁶ Regarding the enhanced deployment of 5G wireless

⁸ FCC Ownership Disclosure Filing for LB License Co, LLC, FCC Form 602, FCC File No. 0008043391, Exh. A, Narrative Description of Ownership of LB License Co, LLC at A-1 (LB License Ownership Disclosure); *see also* T-Mobile/LB License Public Interest Statement at 2.

⁹ LB License Ownership Disclosure at A-1, A-2.

¹⁰ T-Mobile/LB License Public Interest Statement at 1-2. The Partial Economic Area (PEA) 008 (Dallas, TX) 600 MHz licenses at issue in this transaction were originally included in ULS File No. 0010168412 (filed Sep. 2, 2022). On August 24, 2023, T-Mobile filed a Description of Amendment, in which they removed these specific 600 MHz licenses from ULS File No. 0010168412. The assignment application for ULS File No. 0010168412 was subsequently approved in the *T-Mobile-Channel 51-LB License Assignment Order*.

¹¹ *See* T-Mobile/LB License Spectrum Aggregation Exhibit (filed Feb. 15, 2024).

¹² *See* T-Mobile/LB License Spectrum Aggregation Exhibit (filed Feb. 15, 2024).

¹³ On March 24, 2020, Channel 51 and LB License each filed a notification disclosing that they had entered into a long-term spectrum manager lease agreement with T-Mobile. *See* Notification of T-Mobile License LLC and Channel 51 License Company LLC of a Long-Term Spectrum Manager Lease Agreement, ULS File No. 0009021213 (filed Mar. 24, 2020); Notification of T-Mobile License LLC and LB License Co, LLC of a Long-Term Spectrum Manager Lease Agreement, ULS File No. 0009021220 (filed Mar. 24, 2020). These notifications were accepted by WTB on July 9, 2020. On December 3, 2020, WTB denied Verizon's Petition for Reconsideration of the acceptance of T-Mobile's spectrum manager lease arrangements with Channel 51 and LB License. *See T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd 14059.

¹⁴ T-Mobile/LB License Public Interest Statement at 2-3.

¹⁵ T-Mobile/LB License Public Interest Statement at 3.

¹⁶ T-Mobile/LB License Public Interest Statement at 2-5.

broadband services in the Dallas, TX PEA, the Applicants assert the low-band 600 MHz spectrum at issue is critical to T-Mobile's added capacity and provision of extended wireless service to both low-population-density rural areas and metropolitan customers without necessary building penetration in urban areas.¹⁷

C. Transaction Review Process

7. On February 16, 2024, LB License and T-Mobile filed one application requesting Commission approval for the assignment of 600 MHz licenses from LB License to T-Mobile.¹⁸ On March 27, 2024, this application was put on an accepted for filing public notice.¹⁹ On April 10, 2024, EchoStar filed a petition to deny regarding the assignment of these 600 MHz licenses.²⁰ On April 22, 2024, LB License filed an opposition to EchoStar's petition.²¹ Also on April 22, 2024, T-Mobile filed an opposition to EchoStar's petition.²² On April 29, 2024, EchoStar filed a reply to the oppositions.²³ On June 7, 2024, EchoStar and the Applicants each filed a summary of an oral presentation to Commission staff.²⁴

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 the proposed transaction will serve the public interest, convenience, and necessity.²⁵ In making this determination, we first assess whether the proposed transaction complies

¹⁷ T-Mobile/LB License Public Interest Statement at 3.

¹⁸ T-Mobile/LB License Public Interest Statement at 3.

¹⁹ *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 No. 0010923038, Public Notice, Report No. 18511 (WTB Mar. 27, 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 April 10, 2024. See 47 CFR § 1.948(j)(1)(iii).

²⁰ EchoStar Petition to Deny. 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>.

²¹ LB License Opposition.

²² T-Mobile Opposition.

²³ EchoStar Reply.

²⁴ Letter from Jeff Blum, Executive Vice President, External & Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038 (filed June 7, 2024) (EchoStar June 7, 2024 Presentation Summary); Letter from Monish Kundra, LB License, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038 (filed June 7, 2024) (LB License June 7, 2024 Presentation Summary); Letter from Steve Sharkey, Vice President, Government Affairs Engineering and Technology Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038 (filed June 7, 2024) (T-Mobile June 7, 2024 Presentation Summary).

²⁵ 47 U.S.C. § 310(d); see, e.g., *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12155-56, para. 10; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39; 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*).

with the specific provisions of the Act, other applicable statutes, and the Commission's rules.²⁶ If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²⁷ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁸ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²⁹

9. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁰ The Commission has determined that it may impose and enforce transaction-specific conditions that address potential harms of a transaction.³¹ 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.³²

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.³³ 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.³⁴ Because no party has questioned the basic qualifications of T-Mobile or LB License 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.

²⁶ 47 U.S.C. § 310(d); see, e.g., *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12155-56, para. 10; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39.

²⁷ See, e.g., *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12155-56, para. 10; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40.

²⁸ See, e.g., *Application of T-Mobile License LLC and Horry Telephone Cooperative, Inc. to Assign Spectrum Licenses; Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses; Application of Horry Telephone Cooperative, Inc. and T-Mobile License LLC to Assign Spectrum Licenses*, ULS File Nos. 0010864059, 0010877919, 0010902770, Memorandum Opinion and Order, DA 24-974, at 4-5, para. 8 (WTB/OEA Sept. 24, 2024) (*T-Mobile-HTC Order*); *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12155-56, para. 10; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6239, para. 285.

²⁹ See, e.g., *T-Mobile-HTC Order* at 4-5, para. 8; *Liberty Latin America-DISH Order* at 4-5, para. 9; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12155-56, para. 10.

³⁰ See, e.g., *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12156, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40.

³¹ See, e.g., *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12156, para. 11.

³² 47 U.S.C. § 309(e); see, e.g., *Liberty Latin America-DISH Order* at 5, para. 10; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12156, para. 11; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

³³ 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 Assignment Order*, 38 FCC Rcd at 12156-57, para. 12; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43.

³⁴ 47 U.S.C. § 310(d); see, e.g., *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12156-57, para. 12; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43.

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.³⁵ Regarding mobile spectrum holding policies, the Commission's fundamental goal is the preservation and promotion of competition, which in turn, leads to lower prices, improved quality, and increased innovation.³⁶ 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.³⁷ 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.

12. *Record.* EchoStar asserts that the Commission, as part of its public interest analysis, should consider:³⁸ (1) 600 MHz spectrum aggregation outside of the 600 MHz spectrum at issue; and (2) spectrum aggregation more generally, including other CMAs not implicated by this transaction.³⁹ EchoStar also contends that T-Mobile would harm competition in the Dallas, TX PEA because it would have post-transaction five blocks out of the seven blocks of 600 MHz spectrum in this market.⁴⁰ EchoStar concludes that the Commission should either deny the proposed transaction or hold the transaction in abeyance until after the Commission has completed a separate rulemaking regarding its mobile spectrum holdings policies.⁴¹

³⁵ See, e.g., *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12159-60, 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.

³⁶ See, e.g., *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12159-60, para. 20; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6144, para. 17.

³⁷ See, e.g., *Liberty Latin America-DISH Order* at 6, para. 13; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12159-60, para. 20; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617-18, para. 94.

³⁸ EchoStar states that its subsidiaries hold 600 MHz spectrum in the markets that are the subject of this transaction 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.

³⁹ EchoStar June 7, 2024 Presentation Summary at 1, 3-5; see also EchoStar Petition to Deny at 3, 6-8, 10-11; EchoStar Reply at 2.

⁴⁰ EchoStar June 7, 2024 Presentation Summary at 3; see also Letter from Jeff Blum, Executive Vice President, External & Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038 (filed Sept. 26, 2024) (EchoStar Sept. 26, 2024 Presentation) {[]};

[]}; Letter from Jeff Blum, Executive Vice President, External & Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038, at 2 (filed Oct. 15, 2024) (EchoStar Oct. 15, 2024 Presentation Summary) (arguing that EchoStar has provided "detailed technical evidence showing how and why EchoStar's ability to compete in an important large market like Dallas would be directly harmed if T-Mobile is allowed to own five of the seven 600 MHz blocks"). Material set off by double brackets {[]} is confidential and is redacted from the public version of this *Order*.

⁴¹ EchoStar June 7, 2024 Presentation Summary at 1-2, 5; EchoStar Reply at 4. In EchoStar's petition to deny, however, it argues only for denial of this transaction. EchoStar Petition to Deny at 11.

13. Concerning 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.⁴² EchoStar argues that these transactions, including the instant transaction, will allow T-Mobile to dominate this band to the detriment of competition.⁴³ EchoStar asserts that T-Mobile already dominates the important 600 MHz band in terms of total bandwidth and contiguous blocks.⁴⁴ EchoStar further argues that granting T-Mobile even more 600 MHz spectrum by approving this transaction, “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.”⁴⁵

14. 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 transaction.⁴⁶ 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.⁴⁷ In EchoStar’s petition, it refers to the *T-Mobile-Channel 51-LB License Assignment Order* that has a list of 48 CMAs in which T-Mobile exceeds the spectrum screen trigger.⁴⁸

15. Regarding the Dallas, TX PEA, EchoStar asserts that T-Mobile does not justify the competitive harm that would result from preventing potential competitors from purchasing five of the seven blocks in the 600 MHz band in this market.⁴⁹ EchoStar points to T-Mobile’s assertion that EchoStar, which has only two blocks in the 600 MHz band in the Dallas, TX PEA, has enough spectrum (with other assets) to provide sufficient competitive pressure on T-Mobile, and in addressing this assertion, EchoStar asserts that if two blocks is enough to compete in the market, then T-Mobile should not need another three blocks to serve the rural, less dense areas where it already has two blocks of 600 MHz spectrum.⁵⁰ Regarding T-Mobile already leasing the spectrum involved in this transaction, EchoStar notes T-Mobile’s statement when leasing the spectrum that it only needed to temporarily use the spectrum as it pertains to facilitating the transition of Sprint customers to T-Mobile’s network following the consummation of the T-Mobile/Sprint merger.⁵¹ EchoStar concludes that these latest applications follow

⁴² 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 1-2; EchoStar Reply at 8 & n.31. 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 8 & n.31; EchoStar June 7, 2024 Presentation Summary at 3.

⁴³ EchoStar Petition to Deny at 1-2, 4; EchoStar Reply at 8 & n.31; EchoStar June 7, 2024 Presentation Summary at 3.

⁴⁴ EchoStar June 7, 2024 Presentation Summary at 1-3; *see also* EchoStar Petition to Deny at 7; EchoStar Reply at 2-4; EchoStar Oct. 15, 2024 Presentation Summary at 2.

⁴⁵ EchoStar Petition to Deny at 7.

⁴⁶ EchoStar Petition to Deny at 10-11; EchoStar June 7, 2024 Presentation Summary at 3.

⁴⁷ EchoStar June 7, 2024 Presentation Summary at 3; EchoStar Petition to Deny at 10-11 & n.31 (stating that these estimates are based on T-Mobile’s spectrum holdings excluding the instant transaction, but including any 800 MHz spectrum it holds and recently awarded 2.5 GHz licenses from Auction 108).

⁴⁸ EchoStar Petition to Deny at 10 (citing Appendix A in the *T-Mobile-Channel 51-LB License Assignment Order*).

⁴⁹ EchoStar Petition to Deny at 1-2, 8; EchoStar June 7, 2024 Presentation Summary at 3; *see also* EchoStar Sept. 26, 2024 Presentation at 2-3.

⁵⁰ EchoStar Petition to Deny at 8; *see also* EchoStar Sept. 26, 2024 Presentation at 2-3.

⁵¹ EchoStar Reply at 5 (citing T-Mobile/Channel 51 Lease Public Interest Statement, ULS File No. 0009021213, at 4-5 (filed Mar. 23, 2020); T-Mobile/LB License Lease Public Interest Statement, ULS File No. 0009021220, at 4-5 (filed Mar. 23, 2020)); *see also* EchoStar Oct. 15, 2024 Presentation Summary at 3.

T-Mobile's consistent pattern of spectrum aggregation and foreclosure of competition and therefore the Commission should either deny the transaction or hold the transaction in abeyance until the Commission completes its separate rulemaking regarding its mobile spectrum holdings policies.⁵²

16. In response, the Applicants contend that EchoStar's arguments concerning 600 MHz spectrum aggregation and competition are not transaction-specific.⁵³ The Applicants further assert that a 600 MHz band-specific examination is in contravention of the Commission's competitive review of wireless transactions.⁵⁴ The Applicants state that, as part of the Commission's review, the Commission considers all spectrum it deems suitable and available and does not focus on spectrum aggregation within a single band.⁵⁵ Pointing to the *T-Mobile-Channel 51-LB License Assignment Order*, the Applicants note 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.⁵⁶ In addition, the Applicants maintain that EchoStar's arguments concerning T-Mobile's spectrum holdings in markets not impacted by the proposed transaction are outside the scope of the Commission's review and therefore should not be considered.⁵⁷

17. The Applicants assert that while post-transaction the below-1-GHz spectrum would exceed the threshold because of the Commission's "enhanced factor review,"⁵⁸ the proposed 600 MHz license acquisition will serve the public interest and promote competition, investment, and innovation.⁵⁹ The Applicants argue that the proposed transaction would result in T-Mobile exceeding the low-band threshold by less than 10 megahertz, and the totality of the spectrum is already attributed to T-Mobile due to its underlying spectrum manager leasing arrangements.⁶⁰ The Applicants assert, noting prior statements by the Bureaus, that exceeding the spectrum screen is not indicative of competitive harm because the screen is used as a threshold which, if triggered, results in additional review.⁶¹ The Applicants argue that WTB previously determined that T-Mobile's utilization of the spectrum did not raise competitive concerns when it approved the underlying leasing arrangements⁶² and that T-Mobile's lease of this spectrum since 2020 demonstrates its use of this spectrum has not led to competitive harm.⁶³

18. The Applicants argue that because of the Commission's efforts to increase the total spectrum allocated and licensed for mobile broadband use and the current spectrum holdings of rival providers, the addition of 30 megahertz to T-Mobile's holdings in these markets will not foreclose market entry by a competitor or raise rivals' costs.⁶⁴ The Applicants assert that the transaction will not result in a

⁵² EchoStar June 7, 2024 Presentation Summary at 1-5; EchoStar Reply at 4; *see also* EchoStar Oct. 15, 2024 Presentation Summary at 1.

⁵³ T-Mobile Opposition at 8; LB License Opposition at 11-12; T-Mobile June 7, 2024 Presentation Summary at 2.

⁵⁴ T-Mobile Opposition at 2, 5-6; LB License Opposition at 6.

⁵⁵ T-Mobile Opposition at 2, 5-6; LB License Opposition at 2, 6.

⁵⁶ T-Mobile Opposition at 3-4, 8; LB License Opposition at 3-5, 11-12; T-Mobile June 7, 2024 Presentation Summary at 1-2; LB License June 7, 2024 Presentation Summary at 1-2.

⁵⁷ T-Mobile Opposition at 8; LB License Opposition at 11-12; T-Mobile June 7, 2024 Presentation Summary at 2.

⁵⁸ T-Mobile/LB License Public Interest Statement at 5 (citing the *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238-40, paras. 282-88).

⁵⁹ T-Mobile/LB License Public Interest Statement at 5-6; T-Mobile Opposition at 2.

⁶⁰ T-Mobile/LB License Public Interest Statement at 6.

⁶¹ T-Mobile/LB License Public Interest Statement at 13 (citing the *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14066, para. 18).

⁶² T-Mobile/LB License Public Interest Statement at 6.

⁶³ T-Mobile/LB License Public Interest Statement at 6; LB License Opposition at 2.

⁶⁴ T-Mobile/LB License Public Interest Statement at 6.

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 possess sufficient spectrum assets to support robust 4G LTE and 5G-NR services, ensuring a high degree of competition.⁶⁶ Moreover, the Applicants assert 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. *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 interest benefits.⁶⁸ When analyzing the potential competitive effects of a proposed transaction, the Commission consistently has analyzed the specific markets implicated in the transaction at issue.⁶⁹ 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.⁷⁰

20. We note as a preliminary matter that some of the markets discussed by EchoStar are not subject to the instant transaction. 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 this particular transaction exhibits national characteristics that provide cause for concern. Accordingly, we focus on the local markets at issue in the instant proposed transaction in our analysis.⁷¹ Further, the Commission has not adopted a band-specific

⁶⁵ T-Mobile Opposition at 5; LB License Opposition at 2, 5, 7; *see also* T-Mobile/LB License Public Interest Statement at 5.

⁶⁶ T-Mobile Opposition at 5.

⁶⁷ T-Mobile Opposition at 6; LB License Opposition at 6-7; *see also* Letter from Nancy J. Victory, DLA Piper LLP, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038, at 1-2 (filed Oct. 15, 2024); Letter from Trey Hanbury, Counsel, LB License, to Marlene H. Dortch, Secretary, FCC, ULS File No. 0010923038 (filed Oct. 4, 2024) (asserting that "the three 600 MHz blocks in Dallas at issue in this transaction are not the only spectrum, or even the only low-band spectrum, useful and available for wireless service").

⁶⁸ *See, e.g., Liberty Latin America-DISH Order*, DA 24-783; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd 12150; *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, Memorandum Opinion and Order, 36 FCC Rcd 16994 (2021) (*Verizon-TracFone Order*); *T-Mobile-Sprint Order*, 34 FCC Rcd 10578; *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*).

⁶⁹ *See, e.g., Liberty Latin America-DISH Order* at 5-13, paras. 12-27; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12159-82, 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; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21564-86, 21593-99, paras. 95-165, 184-200.

⁷⁰ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6212, para. 198.

⁷¹ 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

(continued....)

limit either on 600 MHz spectrum or on any other band included in the spectrum screen in its review of proposed secondary market transactions,⁷² and we decline to do so here.

21. 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 transaction. We also decline to hold the application in abeyance, as requested by EchoStar, pending the completion of a separate proceeding regarding the Commission's mobile spectrum holdings policies more generally.⁷³ While EchoStar puts forth certain arguments that are not specific to the markets in this transaction, 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.

22. 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.⁷⁴ We note, as an initial matter, that due to the existing spectrum manager leasing arrangements between the Applicants, the spectrum at issue in the instant transaction, including the below-1-GHz spectrum, has already been attributed to T-Mobile. Nonetheless, we undertake our market-by-market analysis, including enhanced factor review, that evaluates the likelihood of competitive harm in the markets implicated by this transaction to ensure that the public interest, convenience, and necessity continues to be served. As discussed in detail below, we find that, post-transaction, the likelihood of competitive harm remains low in the markets that are the subject of this transaction.

A. Market Definitions and Market Participants

23. 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).⁷⁵ The Commission has previously found that the geographic market for wireless transactions is local, generally the CMA.⁷⁶ 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.⁷⁷ For this proposed transaction, we continue to use CMAs as the appropriate local market for analyzing potential spectrum

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acquisition," but noting that the Commission "will continue to analyze the potential competitive effects of those secondary market transactions that exhibit national characteristics").

⁷² See, e.g., *T-Mobile-HTC Order* at 9, para. 21; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12163, para. 30.

⁷³ 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).

⁷⁴ 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).

⁷⁵ See, e.g., *Liberty Latin America-DISH Order* at 6, para. 15; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12163-64, para. 32; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10601, 10603, paras. 55, 60.

⁷⁶ See, e.g., *Liberty Latin America-DISH Order* at 6-7, para. 16; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12164, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, para. 66.

⁷⁷ See, e.g., *T-Mobile-HTC Order* at 10, para. 24; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12164, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10606, para. 66.

aggregation issues.⁷⁸ 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.⁷⁹ Consistent with Commission precedent, we focus on facilities-based entities providing mobile telephony/broadband services using the spectrum bands included in the spectrum screen.⁸⁰

B. Competitive Analysis

1. Initial Screen

24. 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.⁸¹ 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.⁸²

25. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the HHI screen.⁸³ In terms of spectrum aggregation, and as noted above, T-Mobile, as a result of the proposed assignment, would acquire 30 megahertz of 600 MHz spectrum in twelve counties in all or parts of two CMAs in Texas, which together cover approximately 2% of the

⁷⁸ See, e.g., *T-Mobile-HTC Order* at 10, para. 24; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12164, para. 33; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, 10607, paras. 66, 69.

⁷⁹ 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 Assignment Order*, 38 FCC Rcd at 12164, 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.

⁸⁰ See, e.g., *Liberty Latin America-DISH Order* at 7, para. 18; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12165, 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 competitive effects. See, e.g., *Liberty Latin America-DISH Order* at 7, para. 18; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12165, para. 35 & n.128; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73.

⁸¹ 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 Assignment Order*, 38 FCC Rcd at 12165, para. 36 & n.129; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87 & n.277.

⁸² See, e.g., *Liberty Latin America-DISH Order* at 8, para. 19; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12165, 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.

⁸³ T-Mobile/LB License Public Interest Statement at 12.

population of the United States, excluding the territories: CMA 9 (Dallas-Fort Worth, TX) and CMA 292 (Sherman-Denison, TX). Post-transaction, T-Mobile would continue to hold one-third or more of the total suitable and available spectrum in both Dallas-Fort Worth, TX and Sherman-Denison, TX.⁸⁴ Specifically, T-Mobile would continue to hold a maximum of 450 megahertz of spectrum in Dallas-Fort Worth, TX and a maximum of 386.5 megahertz of spectrum in Sherman-Denison, TX, as well as 76 megahertz of below-1-GHz spectrum in each market.⁸⁵ We again note that while this spectrum is already attributed to T-Mobile,⁸⁶ we nonetheless undertake our market-by-market analysis to ensure that the public interest, convenience, and necessity continues to be served.

2. Market-by-Market Analysis

26. Consistent with existing Commission precedent,⁸⁷ 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;⁸⁸ the rival firms' market shares;⁸⁹ the applicant's market share; the total

⁸⁴ See T-Mobile Spectrum Aggregation Exhibit.

⁸⁵ See T-Mobile Spectrum Aggregation Exhibit. 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. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6238-40, paras. 267, 282-88.

⁸⁶ *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, paras. 2, 4.

⁸⁷ See, e.g., *Liberty Latin America-DISH Order* at 10, para. 23; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12165-66, para. 38; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10620-23, paras. 101, 106.

⁸⁸ 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.

⁸⁹ 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

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amount of spectrum available; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the applicant; and the spectrum holdings of each of the rival service providers and licensees.⁹⁰

27. *CMA 9 (Dallas-Fort Worth, TX)*: Dallas-Fort Worth, TX is a non-rural market with a population of 7,599,029 and a population density of 909 people per square mile.⁹¹ Considering this non-rural market, T-Mobile was attributed with 426.5 megahertz to 450 megahertz of spectrum on a county-by-county basis pre-transaction, including 76 megahertz of below-1-GHz spectrum.⁹² Through its acquisition of 30 megahertz of 600 MHz spectrum, T-Mobile would continue to hold a maximum of 450 megahertz of spectrum on a county-by-county basis post-transaction, including 76 megahertz of below-1-GHz spectrum.⁹³ AT&T holds 280 megahertz of spectrum on a county-by-county basis, including 80 megahertz of below-1-GHz spectrum, while Verizon holds 252 megahertz to 277 megahertz of spectrum, including 22 megahertz to 47 megahertz of below-1-GHz spectrum, and EchoStar holds 131 megahertz of spectrum, including 26 megahertz of below-1-GHz spectrum.⁹⁴ In addition, Bluewater Wireless holds 10 megahertz of spectrum on a county-by-county basis in this market.

28. Regarding coverage,⁹⁵ 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 this market.⁹⁶ Further, AT&T,

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whole counties or groups of counties, reduces the level of inaccuracy inherent in combining non-coterminous areas, such as rate center areas and counties.

⁹⁰ See, e.g., *Liberty Latin America-DISH Order* at 10, para. 23; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12168, 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.

⁹¹ 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).

⁹² We derive spectrum holdings from the Applicants' submissions and our licensing databases as of September 4, 2024.

⁹³ 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. T-Mobile holds 1,200 megahertz to 1,400 megahertz of mmW spectrum in this market, while AT&T holds 1,100 megahertz, and Verizon holds 1,750 megahertz. Other licensees, including EchoStar, hold 200 to 700 megahertz.

⁹⁴ These spectrum totals include spectrum won in Auctions 107 and 110. Since the underlying spectrum manager leasing arrangements were approved, AT&T won 100 megahertz and Verizon won 140 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while EchoStar also won 30 megahertz.

⁹⁵ As noted above, we derive mobile broadband coverage from the December 2023 Broadband Data Collection data. For 4G LTE, these data are based on speed thresholds of 5/1 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.

⁹⁶ 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* (continued....)

T-Mobile, and Verizon each have significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps in this market.⁹⁷ In addition, EchoStar has significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps in this market. In terms of significant market share, T-Mobile holds {[]} % in this market, while AT&T holds {[]} %, and Verizon holds {[]} %. No other service providers have a significant market share in this market.

29. *CMA 292 (Sherman-Denison, TX)*: Sherman-Denison, TX is a non-rural market with a population of 135,543 and a population density of 145 people per square mile. Considering this non-rural market, T-Mobile was attributed with 386.5 megahertz of spectrum on a county-by-county basis pre-transaction, including 76 megahertz of below-1-GHz spectrum. Through the acquisition of 30 megahertz of 600 MHz spectrum, T-Mobile would continue to hold a maximum of 386.5 megahertz of spectrum on a county-by-county basis post-transaction, including 76 megahertz of below-1-GHz spectrum.⁹⁸ Currently, AT&T holds 305 megahertz of spectrum on a county-by-county basis, including 55 megahertz of below-1-GHz spectrum, while Verizon holds 267 megahertz of spectrum, including 47 megahertz of below-1-GHz spectrum, and EchoStar holds 121 megahertz of spectrum, including 26 megahertz of below-1-GHz spectrum.⁹⁹ In addition, Bluewater Wireless holds 10 megahertz of spectrum on a county-by-county basis in this market.

30. Regarding coverage in this non-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 this market. Further, AT&T, T-Mobile, and Verizon each have significant 5G-NR population and land area coverage at speeds of at least 7/1 Mbps in this market.¹⁰⁰ In addition, EchoStar has significant 5G-NR population coverage at speeds of at least 7/1 Mbps in this market. In terms of significant market share, T-Mobile holds {[]} % in this market, while AT&T holds {[]} %, and Verizon holds {[]} %. No other service providers have a significant market share in this market.

31. As noted above, T-Mobile has already been using this spectrum in both markets as a result of the underlying spectrum manager leasing arrangements,¹⁰¹ and we find no evidence in the record that this has led to any anticompetitive effects in these two CMAs. Further, notwithstanding the fact that T-Mobile would continue to hold more than one-third of the below-1-GHz spectrum post-transaction,¹⁰²

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America-DISH Order at 11, para. 25 & n.78; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12167-68, para. 42 & n.150.

⁹⁷ In terms of 5G-NR coverage at speeds of at least 35/3 Mbps, AT&T, T-Mobile, and Verizon each have significant population and land area coverage in this market. In addition, EchoStar has significant 5G-NR population and land area coverage at speeds of at least 35/3 Mbps in this market.

⁹⁸ T-Mobile also holds 1,425 megahertz of mmW spectrum, while AT&T holds 1,100 megahertz, and Verizon holds 1,525 megahertz. Other licensees, including EchoStar, hold 200 to 700 megahertz.

⁹⁹ These spectrum totals include spectrum won in Auctions 107 and 110. Since the underlying spectrum manager leasing arrangements were approved, AT&T won 100 megahertz and Verizon won 140 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while EchoStar also won 30 megahertz.

¹⁰⁰ In terms of 5G-NR coverage at speeds of at least 35/3 Mbps, Verizon has significant population and land area coverage, AT&T has close-to-significant population coverage and significant land area coverage, and T-Mobile has significant population coverage and close-to-significant land area coverage in this market. In addition, EchoStar has close-to-significant 5G-NR population coverage at speeds of at least 35/3 Mbps in this market.

¹⁰¹ *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

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
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as well as more than one-third of the *total* suitable and available spectrum post-transaction, we find that the likelihood of competitive harm is low in these CMAs 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 these CMAs. Also, AT&T, Verizon, and EchoStar each hold substantial amounts of spectrum in total in addition to their low-band spectrum holdings. Further, in addition to T-Mobile, AT&T and Verizon each have a significant market share. Finally, in addition to T-Mobile, AT&T, Verizon, and EchoStar have substantial 4G LTE and 5G-NR coverage. For these reasons, we find that the acquisition of the low-band spectrum in the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of T-Mobile in these CMAs. We find it highly unlikely that the assignment of 30 megahertz of spectrum to T-Mobile in these CMAs would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

V. POTENTIAL PUBLIC INTEREST BENEFITS

32. 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.”¹⁰⁴ 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 transaction¹⁰⁵—and verifiable.¹⁰⁶ Further, the Commission is “more likely to find marginal cost reductions to be cognizable than reductions in fixed cost”¹⁰⁷ 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.¹⁰⁸ The Commission applies a “sliding scale approach” to evaluating benefit

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potential public interest benefits associated with the acquisition of this low-band spectrum by T-Mobile are evaluated in section V.

¹⁰³ 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, 13072, para. 36 (2015); *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, 5123, para. 36 (2015). In addition, regarding EchoStar’s arguments concerning the 600 MHz band, while the Commission does consider aggregation of below-1-GHz spectrum as an enhanced factor, the Commission generally does not look at band-specific aggregation in its case-by-case review. We further find there is nothing unique about the 600 MHz band as opposed to other below-1-GHz spectrum bands. See EchoStar Sept. 26, 2024 Presentation at 2-3; EchoStar Oct. 15, 2024 Presentation Summary at 2; see also EchoStar June 7, 2024 Presentation Summary at 3.

¹⁰⁴ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

¹⁰⁵ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

¹⁰⁶ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

¹⁰⁷ See, e.g., *T-Mobile-HTC Order* at 15, para. 35; *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

¹⁰⁸ See, e.g., *T-Mobile-HTC Order* at 15, para. 35; *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214.

claims.¹⁰⁹ 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.”¹¹⁰ Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.¹¹¹

33. *Record.* The Applicants assert that T-Mobile is using the spectrum in accordance with existing long-term spectrum manager leasing arrangements and that consent to the assignment application will allow T-Mobile to preserve and enhance its network performance in the market.¹¹² The Applicants assert that T-Mobile’s use of the 600 MHz spectrum in accordance with the approved spectrum leases has facilitated its deployment of wireless broadband services, making possible the rapid and robust deployment of its 5G network in the market covered by the licenses.¹¹³ Specifically, the Applicants contend that T-Mobile’s use of this spectrum has enabled additional capacity and improved data throughputs, network reliability, and coverage in the license areas.¹¹⁴ The Applicants claim that the low-band 600 MHz spectrum augments the capacity of T-Mobile’s low-band network as these frequencies provide a coverage layer and network control functions for other bands utilized by T-Mobile’s network.¹¹⁵ Further, the Applicants claim that use of this spectrum under the leases has led directly to T-Mobile providing significantly faster speeds, enhanced capacity, and a far better user experience with more advanced use cases in those areas.¹¹⁶

34. The Applicants maintain that permanent access to and allocation of the 600 MHz spectrum at issue will allow T-Mobile to continue to enhance and bolster its 5G service offerings in all or parts of the license areas and meet consumers’ increasing demand for mobile broadband data in those areas.¹¹⁷ The Applicants assert that the 600 MHz spectrum covered by the licenses is particularly well-suited to support T-Mobile’s network; its characteristics enhance the T-Mobile user experience by significantly improving in-building coverage in urban areas and enhancing coverage and performance in suburban and rural areas.¹¹⁸ Thus, the Applicants assert that consent to the assignment will ensure T-Mobile can maintain enhanced 5G and LTE network capacity in these markets.¹¹⁹ The Applicants further maintain that consumers benefit considerably from the availability of 5G services that are

¹⁰⁹ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89.

¹¹⁰ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89.

¹¹¹ See, e.g., *Liberty Latin America-DISH Order* at 13-14, para. 28; *T-Mobile-Channel 51-LB License Assignment Order*, 38 FCC Rcd at 12182-83, para. 89.

¹¹² T-Mobile/LB License Public Interest Statement at 2-4; T-Mobile Opposition at 9; LB Opposition at 13; see also *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14065, para. 14.

¹¹³ T-Mobile/LB License Public Interest Statement at 3, 5; T-Mobile Opposition at 9; LB Opposition at 13.

¹¹⁴ T-Mobile/LB License Public Interest Statement at 4; T-Mobile Opposition at 9; LB Opposition at 13.

¹¹⁵ T-Mobile/LB License Public Interest Statement at 3.

¹¹⁶ T-Mobile/LB License Public Interest Statement at 3; T-Mobile Opposition at 9; LB Opposition at 13.

¹¹⁷ *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14065, para. 14; T-Mobile/LB License Public Interest Statement at 3-4; T-Mobile Opposition at 9; LB Opposition at 13.

¹¹⁸ T-Mobile/LB License Public Interest Statement at 3-4; T-Mobile Opposition at 6, 9. According to the Applicants, low-band spectrum travels farther and penetrates buildings more efficiently than higher-frequency bands, and accordingly, it provides a critical on-ramp to T-Mobile’s network. T-Mobile/LB License Public Interest Statement at 3.

¹¹⁹ T-Mobile/LB License Public Interest Statement at 4; LB Opposition at 13-14.

provided as a result of T-Mobile's use of this spectrum, with benefits including access to in-home broadband service and increased competition.¹²⁰

35. According to the Applicants, given these low-band spectrum characteristics, T-Mobile's increased operation of 600 MHz serves the public interest by ensuring E911 coverage and by closing the digital divide by offering remote rural customers and inner-city customers superior access to high-speed broadband data.¹²¹ Regarding the digital divide, the Applicants assert that in Dallas, lower-income consumers are concentrated in urban and rural enclaves that have a greater reliance on low-band spectrum than other areas do.¹²² Lower-income consumers in the Dallas cluster's urban areas rely on low-band spectrum for in-building performance and lower-income consumers in rural areas benefit from wide-area coverage that the low-band spectrum supports.¹²³ The Applicants assert that these rural and inner-city consumers will realize outsized benefits from the assignment of the spectrum at issue to T-Mobile.¹²⁴

36. The Applicants state that loss of access to this spectrum would result in homes facing a loss in access to fixed wireless broadband services and a significant degradation in the performance of the network for rural and low-income areas.¹²⁵ The Applicants assert that sufficient low-band spectrum capacity enables T-Mobile to increase the extent of its Fixed Wireless Access services, thereby increasing competition in the market for in-home broadband.¹²⁶ Critically, the Applicants assert that T-Mobile's loss of access to the spectrum in question would force the company to reduce access to this competitive service due to capacity constraints.¹²⁷

37. *Discussion.* We have reviewed the benefits asserted by T-Mobile and LB License in the Public Interest Statement, as well as their supplemental filings. We note that the 600 MHz spectrum at issue provides additional capacity and extended cell reach to serve low population density rural areas and provides building penetration to serve metropolitan customers in more urban areas. We credit as a public interest benefit that consumers are 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. We further find that the proposed transaction would allow T-Mobile to provide a better user experience to its customers. Further, T-Mobile has set forth a detailed public interest showing explaining how its spectrum deployment benefits consumers in the market, including how the permanent acquisition and continued use of this spectrum impacts rural and minority groups. We therefore find that the record provides support for T-Mobile's and LB License's assertions that the proposed transaction would result in certain verifiable, transaction-specific public interest benefits.

VI. CONCLUSION

38. 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 this transaction. Specifically,

¹²⁰ T-Mobile/LB License Public Interest Statement at 3-5; T-Mobile Opposition at 9.

¹²¹ T-Mobile/LB License Public Interest Statement at 3.

¹²² T-Mobile/LB License Public Interest Statement at 3-4.

¹²³ T-Mobile/LB License Public Interest Statement at 3-4.

¹²⁴ T-Mobile/LB License Public Interest Statement at 3-4. The Applicants state that while it is difficult to quantify the impact of the low-band network capacity for densely populated urban areas, it is possible to quantify the impact on rural areas. T-Mobile/LB License Public Interest Statement at 3-4. The Applicants detail that, according to U.S. Census data, 45% of the rural land area in the Dallas market cluster has a population of 240,699 residents, of which 20.8% are members of racial and ethnic minority groups; 21% are of school age; and 8% fall below the poverty line. T-Mobile/LB License Public Interest Statement at 3-4.

¹²⁵ T-Mobile/LB License Public Interest Statement at 4.

¹²⁶ T-Mobile/LB License Public Interest Statement at 4; T-Mobile Opposition at 9.

¹²⁷ T-Mobile/LB License Public Interest Statement at 4.

in both CMAs, we find that the transaction is 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 LB License'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 assignment would disserve the public interest. Thus, based on the record before us and our competitive review, we find that T-Mobile and LB License have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.

VII. ORDERING CLAUSES

39. Accordingly, having reviewed the application 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 application for consent to assignment filed by LB License and T-Mobile **IS GRANTED**.

40. **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.

41. **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.

42. 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



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 24-1092
Released: October 22, 2024

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE
TRANSFER OF CONTROL OF THE MANTI TELEPHONE COMPANY TO
LYNCH TELEPHONE CORPORATION X**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-93

Comments Due: November 5, 2024

Reply Comment Due: November 12, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by The Manti Telephone Company (Manti) and Lynch Telephone Corporation X (Lynch X) (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 Manti to Lynch X.²

Manti, a Utah corporation, provides service as a rural incumbent local exchange carrier (LEC) to approximately 2,600 access lines in the communities of Manti, Sterling, and Ephraim, Utah.³

Lynch X, a Delaware corporation and holding company, is a wholly-owned subsidiary of Brighton Communications Corporation, also a Delaware corporation and holding company, which, in turn, is a wholly-owned subsidiary of LICT Corporation (LICT), a Delaware corporation.⁴ LICT

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

² Amended and Restated Domestic Section 214 Application for the Transfer of Control of The Manti Telephone Company to Lynch Telephone Corporation X, WC Docket No. 24-93 (filed Aug. 28, 2024) (Application). The Application replaces a domestic section 214 application previously filed on March 25, 2024 in the same docket. On October 10, 2024 and October 21, 2024, Lynch X filed supplements to the Application. Letter from Stephen J. Moore, President, Lynch Telephone Corporation X, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-93 (filed Oct. 10, 2024) (First Supplement); Letter from Stephen J. Moore, President, Lynch Telephone Corporation X, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-93 (filed Oct. 21, 2024) (Second Supplement). The Applicants also filed an application for the transfer of control of an international section 214 authorization. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Application at 3. Manti is currently owned by Dallas Cox, Gavin Cox, and Natalie Adamson, each US citizens. *Id.* at 3, 9. Manti has been designated as an eligible telecommunications carrier in Utah. *Id.* at 17. Manti participates in the Commission's Lifeline Program and the Applicants state that Manti will continue participating in the program post-consummation. *Id.* at 18.

indirectly owns Central Utah Telephone, Inc. d/b/a Centracom Interactive (Centracom), Bear Lake Communications, Inc. (Bear Lake), and Skyline Telecom (Skyline), each rural incumbent LECs serving portions of Utah.⁵ LICT also indirectly owns other rural incumbent and competitive LECs providing service outside of Utah.⁶ Mario J. Gabelli, a U.S. citizen, holds a 37.6% interest in LICT.⁷

Pursuant to the terms of the proposed transaction, Lynch X will acquire all of stock of Manti.⁸

The Applicants assert that the proposed transaction is consistent with the public interest, convenience, and necessity.⁹ Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.¹⁰

Domestic Section 214 Application Filed for the Transfer of Control of
The Manti Telephone Company to Lynch Telephone Corporation X,
WC Docket No. 24-93 (filed Aug. 28, 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.

⁴ *Id.* at 2; *see also* First Supplement at 1-2. LICT owns directly or through its wholly-owned subsidiaries 16 rural incumbent LECs which range in size from approximately 800 to over 7,000 access lines with locations in California, Iowa, Kansas, Michigan, New Mexico, Utah, and Wisconsin. *Id.* at 2 and 17-18; *see also* Second Supplement at 1. According to the Applicants, as of December 31, 2022, LICT's rural incumbent LECs have deployed 6,703 miles of fiber optic cable, 11,258 miles of copper cable, and 831 miles of coaxial cable. Application at 2. In addition, LICT operates 85 towers to serve fixed wireless broadband customers and leases space to other wholesale carriers. *Id.*

⁵ *Id.*; *see also* Second Supplement at 1. Bear Lake currently serves the Garden City and Laketown communities; Centracom currently serves the Spanish Fork Canyon, Covered Bridge, Scofield, Fairview, Mount Pleasant, and Spring City communities; and Skyline currently serves the Moroni, Chester, Wales, Goshen, Eureka, Dugway, and Wendover communities. Application at 2. The Applicants affirm that there is no overlap between the service area of Manti and the service areas of Centracom, and its rural incumbent LEC subsidiaries, Bear Lakes and Skyline. First Supplement at 4; *see also id.* at 5 (URTA Map). Central Telecom Services, LLC (CTS), a subsidiary of Lynch X, provides competitive LEC and long distance services in Utah and Nevada. *Id.* at 4. The Applicants also affirm that there is no overlap of the service areas of Manti and CTS. *Id.*

⁶ The Applicants provide further information on the each of LICT's rural incumbent and competitive LECs providing service outside of Utah. *Id.* at 12-13; First Supplement at 4.

⁷ Application at 9; *see also* First Supplement at 2. The Applicants state that other than what has been disclosed, neither Mr. Gabelli, nor LICT or any of its subsidiaries or affiliates, hold a 10% or greater interest in any other provider of domestic telecommunications services. First Supplement at 4.

⁸ Application at 3. Following the consummation of the proposed transaction, the following US citizens will serve as Officers of Manti: Eddie L. Cox as President, I. Branch Cox as Chief Executive Officer, and Brad Welch as Chief Operating Officer. *Id.* The Applicants state that Dallas Cox and Gavin Cox, who currently have ownership interests in Manti, will be employed by Centracom post-transaction, with their time and expenses being allocated to various companies including Manti. *Id.*

⁹ Application at 4-6.

¹⁰ 47 CFR § 63.03(c)(1)(v).

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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@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.¹¹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan at (202) 418-1191.

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¹¹ See 47 CFR § 1.45(c).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1093

Released: October 22, 2024

MEDIA BUREAU ANNOUNCES COMPLIANCE DATES FOR THE “ALL-IN” RULE

Compliance is required by December 19, 2024; small cable operators must comply by March 19, 2025

MB Docket No. 23-203

By this Public Notice, the Media Bureau announces dates by which cable operators and direct broadcast satellite (DBS) providers must comply with the requirements of the “all-in” rule, 47 CFR § 76.310, adopted by the Commission pursuant to the *All-In Pricing Report and Order*.¹ On March 19, 2024, the Commission released the *All-In Pricing Report and Order*, which adopted the “all-in” rule, requiring cable operators and DBS providers “to specify the ‘all-in’ price for video programming in their promotional materials that include pricing information and on subscribers’ bills.”² On April 22, 2024, the Bureau announced by Public Notice the effective date of the *All-In Pricing Report and Order* and stated that the Bureau would publish a subsequent Public Notice to remind the public about the compliance dates.³

By the terms of the *All-In Pricing Report and Order*, compliance with the “all-in” rule is not “required until the later of (i) December 19, 2024, or (ii) after the Office of Management and Budget completes review of any such requirements pursuant to the Paperwork Reduction Act,” except that for cable operators with annual receipts of \$47 million or less, compliance is “required until the later of (i) March 19, 2025, or (ii) after the Office of Management and Budget completes review of any such requirements pursuant to the Paperwork Reduction Act.”⁴ The Office of Management and Budget has completed its review of the rule’s requirements.⁵ The Bureau therefore announces that compliance with the “all-in” rule, 47 CFR § 76.310, must be no later than December 19, 2024, except that for cable operators with annual receipts of \$47 million or less, compliance is not required until March 19, 2025.⁶

- FCC -

¹ Federal Communications Commission, *All-In Pricing for Cable and Satellite Television Service*, 89 Fed. Reg. 28660 (Apr. 19, 2024).

² *All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, Report and Order, FCC 24-29, para. 1 (rel. Mar. 19, 2024) (*All-In Pricing Report and Order*).

³ *Media Bureau Announces Publication of “All-in” Pricing Report and Order*, Public Notice, DA 24-377 (MB 2024) (announcing Federal Register publication and the effective date of the *All-In Pricing Report and Order*).

⁴ *All-In Pricing Report and Order* at para. 66.

⁵ Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), OIRA Conclusion (Sept. 23, 2024), https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202407-3060-016.

⁶ *All-In Pricing Report and Order* at para. 66.

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

In the Matter of	)	
	)	
Raicom, Inc. Request for Waiver of Sections	)	FCC File Nos. 0011003204 and 0011003221
1.953(a), (b), (f), and (g) of the Commission's	)	
Rules	)	

ORDER

Adopted: October 23, 2024

Released: October 23, 2024

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) denies a waiver request submitted on March 29, 2024, by Raicom, Inc. (Raicom), a subsidiary of BWTelcom, seeking to reinstate two geographically-based lower 700 MHz licenses that were automatically terminated due to discontinuance of service.¹ Raicom requests a waiver of sections 1.953(a), (b), (f), and (g) of the Commission's rules, which provide that a geographic licensee's authorization will automatically terminate if the licensee discontinues service for 180 consecutive days, that a licensee must notify the Commission of the discontinuance, and that a licensee must file an extension request at least 30 days before the end of the 180-day discontinuance period.² Raicom seeks to extend the discontinuance period until sixty days from the date that the Commission acts on its waiver and extension request.³ For the reasons set forth below, we deny the request.

II. BACKGROUND

2. At issue here are two lower 700 MHz licenses held by Raicom: WY license WQMX965 (CMA540), in Nebraska 8-Chase Channel block B2,⁴ and WZ license WQNF556 (CMA540) in Nebraska 8-Chase Channel block C10,⁵ which were both used to provide fixed wireless service to rural areas of southwestern Nebraska.⁶ Raicom asserts that on or about August 13, 2023, a wireless core malfunction occurred.⁷ Despite "multiple attempts to fix the core" and resume service, "Raicom was forced to

¹ Request for Waiver and Extension of Time to Resume Operations of Raicom, File Nos. 0011003204 and 0011003221 (filed Mar. 29, 2024), <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1730139446&attachmentKey=21950752&attachmentInd=applAttach> (Raicom Waiver Request).

² Raicom Waiver Request at 1 (requesting a waiver of sections 1.954(a), (b), and (f) and specifying that the request for waiver of the deadline for filing an extension under section 1.953(g) was "to the extent necessary.").

³ See *id.* (suggesting an extension of "sixty (60) days from *grant* of this petition" [emphasis added]).

⁴ ULS File No. 0011003204.

⁵ ULS File No. 0011003221.

⁶ Raicom Waiver Request at 1.

⁷ See *id.* We estimate the August 13, 2023, date based on Raicom's statement in its Mar. 29, 2024, waiver request that service was discontinued "[a]pproximately 230 days ago." *Id.*

discontinue service because of a lack of ability to use existing equipment.”⁸ Raicom has not provided any additional information about the circumstances surrounding its service discontinuance or other extenuating circumstances involved.

3. Under the Commission’s rules, Raicom should have filed an extension request of its discontinuance period by January 10, 2024.⁹ Raicom did not file an extension request. Thus, in accordance with 47 CFR § 1.953(a) and (b), the licenses automatically terminated after service was discontinued for 180 consecutive days, on February 9, 2024.¹⁰ The rules require the licensee to notify the Commission of a permanent discontinuance within 10 days (on February 19, 2024), which Raicom also did not do.¹¹

III. DISCUSSION

4. To obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant such waiver.¹³

5. Raicom argues that waiver is justified under the first prong of the waiver standard.¹⁴ Raicom asserts that “the purpose of [sections 1.953(a),(b),and (f)] is to ensure that spectrum is not warehoused and does not lie fallow, but rather is used to offer service to the public.”¹⁵ Raicom states that it does not intend to warehouse the spectrum, but rather “intends to enter into a deal with a local carrier to have the Licenses [sic] used immediately to provide much needed additional capacity for rural broadband services in the area.”¹⁶ Raicom notes that the licenses would otherwise be returned to the Commission’s spectrum inventory to be re-auctioned, but notes that “the Commission presently lacks auction authority.”¹⁷ Thus, Raicom argues that grant of the waiver is in the public interest, as it will enable a yet-to-be determined partner to provide service to Raicom’s rural customers.

⁸ See *id.* at 2.

⁹ 47 CFR § 1.953(g) (establishing that a licensee may file a request, within 30 days of the end of the discontinuance period, for a longer discontinuance period for good cause). We estimate this date based on Raicom’s statement in its Mar. 29, 2024, waiver request that service was discontinued “[a]pproximately 230 days ago.” Raicom Waiver Request at 1.

¹⁰ 47 CFR § 1.953(a)-(b).

¹¹ 47 CFR § 1.953(f) (requiring a licensee to notify the Commission of discontinuance within 10 days by filing a form to request license cancellation). We estimate this date based on Raicom’s statement in its Mar. 29, 2024, waiver request that service was discontinued “[a]pproximately 230 days ago.” Raicom Waiver Request at 1.

¹² 47 CFR § 1.925(b)(3).

¹³ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d* 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972).

¹⁴ See Raicom Waiver Request at 3-4.

¹⁵ See *id.* at 3 (citing 47 CFR § 1.953 and *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operations, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8894, para. 51 (2017) (*WRS Reform Second R&O*)).

¹⁶ See Raicom Waiver Request at 3.

¹⁷ See *id.* at 4.

6. Even if the Bureau accepts Raicom's characterization of the purpose of the discontinuance rules, we find that Raicom has failed to meet its burden in pleading facts to support its waiver.¹⁸ Raicom mentions that the initial service disruption here was due to a wireless core meltdown that affected both networks, but it does not provide any additional details of its efforts to fix the problem. Raicom also fails to explain the circumstances behind its failure to file an extension request at least 30 days before the end of the 180-day discontinuance period, as required by rule.¹⁹ Nor does Raicom explain its failure to notify the Commission of its discontinuance within 10 days, which is also required by the rules.²⁰ Finally, Raicom provides no detail regarding plans to reinstate the service, beyond stating generally its intent to partner with another company. Given this lack of context and supporting documentation, the Division finds that Raicom has failed to plead its case with sufficient factual and legal support.²¹

7. We find that Raicom mischaracterizes the purpose of the Commission's discontinuance rules by stating that the sole purpose of the discontinuance rules is to avoid warehousing spectrum. In fact, the Commission's license renewal and discontinuance framework for various frequencies across the Wireless Radio Services serves the public interest by "(1) affording similarly situated licensees and like services comparable regulatory treatment; (2) providing licensees and other interested parties clarity and certainty to facilitate business and network planning; and (3) ensuring that valuable spectrum is not underutilized."²² In other words, the regulatory framework is intended to provide a clear, uniform system for service discontinuance that "strike[s] the appropriate balance between providing licensees with operational flexibility and ensuring spectrum is not warehoused and does not lie fallow."²³ The underlying purposes of the discontinuance regulatory framework is served by application of the rules in this instance because Raicom has presented no details or concrete plans to offer service to the public in a timely manner or continuously as expected by the Commission's rules.²⁴

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.925 and 1.953 of the Commission's rules, 47 CFR §§ 1.925 and 1.953, the request filed by Raicom for extension of the discontinuance period IS DISMISSED and request for waiver of the discontinuance rules IS DENIED.

¹⁸ See *WAIT Radio v. FCC*, 413 F.2d at 1157 (noting that allegations that are "stated with clarity and accompanied by supporting data" must be given a "hard look"); *WRS Reform Second R&O*, 32 FCC Rcd at 8894, para. 51.

¹⁹ 47 CFR § 1.953(g).

²⁰ 47 CFR § 1.953(f).

²¹ See *WAIT Radio v. FCC*, 413 F.2d at 1157; *WRS Reform Second R&O*, 32 FCC Rcd at 8894, para. 51.

²² See *WRS Reform Second R&O*, 32 FCC Rcd at 8894, para. 51.

²³ See *id.*

²⁴ See *WRS Reform Second R&O*, 32 FCC Rcd at 8894, para. 50; see also 47 CFR § 1.925(b)(3); see generally 47 CFR pts. 1, 27.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. 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: <https://www.fcc.gov>

DA 24-1095

Released: October 22, 2024

WIRELINE COMPETITION BUREAU RELEASES THE 2025 TELECOMMUNICATIONS REPORTING WORKSHEETS AND ACCOMPANYING INSTRUCTIONS

WC Docket No. 06-122

The Wireline Competition Bureau (Bureau) announces the release of the (1) annual Telecommunications Reporting Worksheet, FCC Form 499-A (FCC Form 499-A) and accompanying instructions (FCC Form 499-A Instructions) to be used in 2025 to report 2024 revenues,¹ and (2) quarterly Telecommunications Reporting Worksheet, FCC Form 499-Q (FCC Form 499-Q) and accompanying instructions (FCC Form 499-Q Instructions) to be used in 2025 to report projected and collected revenues on a quarterly basis.²

The Bureau has delegated authority to revise the FCC Forms and accompanying instructions to, among other things, ensure “sound and efficient administration of the universal service programs.”³ The

¹ The Communications Act of 1934 (Act), as amended, requires that the Commission establish mechanisms to fund universal service, interstate telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration. 47 U.S.C. §§ 151, 225, 251, 254. To accomplish these congressionally-directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice-over-Internet-Protocol (VoIP) service providers) to report each year on the FCC Form 499-A the revenues they receive from offering service. See 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(b)(5)(iii)(B). The FCC Form 499-A is due on April 1 of each year. See Universal Service Administrative Company Schedule of Filings, <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited Sept. 30, 2024).

² Sections 54.706, 54.711, and 54.713 of the Commission’s rules require all telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund and file an FCC Form 499-Q on February 1, May 1, August 1, and November 1 each year. 47 CFR §§ 54.706, 54.711, 54.713.

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18442, para. 81 (1997) (“Because it is difficult to determine in advance precisely the information that will be needed to administer the new universal service programs, the [Common Carrier, now Wireline Competition] Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs.”). Consistent with this authority, the Bureau annually revises the Telecommunications Reporting Worksheet Instructions to provide instructions and guidance for complying with existing rules and requirements. See 47 CFR § 54.711(c). The FCC Forms and accompanying instructions are modified based on experience in administering the universal service program and explicit rulings by the Commission. See, e.g., *Universal Service Contribution*

(continued....)

Bureau sought comment on the proposed revisions by Public Notice.⁴ Two comments were filed in response to the release of the proposed Forms and instructions: Voice on the Net Coalition (VON) timely filed a comment,⁵ which is addressed below, and IDT Telecom, Inc. (IDT Telecom) filed a comment outside of the 30-day comment period.⁶

The Bureau submitted non-substantive revisions for the FCC Forms and the accompanying instructions (collection 3060-0855) to the Office of Management and Budget (OMB) for approval pursuant to 44 U.S.C. § 3507 of the Paperwork Reduction Act of 1995.⁷ The non-substantive revisions to the information collection were approved by OMB on September 26, 2024.

The revisions to the 2025 FCC Forms 499-A and 499-Q and the accompanying instructions, as applicable, are summarized below. The revised FCC Forms and the accompanying instructions are also attached to this Public Notice for informational purposes only and will be available soon on the Universal Service Administrative Company's (USAC) website at <https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/>.

Changes to both the 2025 FCC Form 499-A and FCC Form 499-Q, where applicable, and instructions:

- **Date Changes:** Dates are updated throughout the FCC Forms and instructions. References to “2024” are changed to “2025” and references to “2023” are changed to “2024.”

Changes to the 2025 FCC Form 499-A Instructions:

- **Clarifications:**
 - Pages 12 and 13 are updated to clarify that USF statements will no longer be sent by mail. Rather, carriers will receive an email notification that their USF statement is ready to be viewed in E-File.
 - Page 13 is updated to clarify that, in the case of an acquisition or merger during the prior calendar year, the successor company must submit the acquired entity's FCC Form 499-A Worksheet and report all pre-acquisition revenue for that calendar year.

(Continued from previous page) _____

Methodology et al., WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7533-50, paras. 24-62 (2006).

⁴ *Wireline Competition Bureau Seeks Comment on Proposed Changes to the FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, Public Notice, DA 24-622 (rel. June 28, 2024) (*2025 Form 499 Public Notice*).

⁵ Voice on the Net Coalition (VON) Comments, WC Docket No. 06-122 (rec. July 29, 2024) (*VON Comments*).

⁶ Letter from Carl Billek, Vice President Regulatory, IDT Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Oct. 8, 2024) (*IDT Telecom Ex Parte*). IDT Telecom has three pending requests for review that address the reporting of Prepaid Calling Card (PPCC) revenue as required by the Form 499-A instructions. *See* Request for Review of Decision of the Universal Service Administrator by IDT Corporation, CC Docket No. 96-45 (filed Apr. 10, 2006); Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, CC Docket No. 96-45 (filed June 30, 2008); Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, WC Docket No. 06-122 (filed April 13, 2023). IDT Telecom's comments in this proceeding seek changes to the Form 499-A instructions that would address issues presented in the pending requests for review. In light of IDT Telecom's pending requests for review, the company's comments are not appropriate to address or consider as part of this record, but will be incorporated into the record for the pending petitions for review.

⁷ *See* Notice of Office of Management and Budget Action (NOA) (dated Sept. 26, 2024), <http://reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-0855> (ICR Reference Number 202406-3060-007) (last visited Oct. 9, 2024).

- Page 17 is updated to clarify that carriers must include an email address for their billing contact person on Line 208.
- Page 18 is updated to clarify that an email address is required for the designated D.C. Agent for Service of Process.
- Page 21 is updated to clarify that the successor company rather than the acquiring company is responsible for reporting total revenues for the reporting period for all predecessor operations.⁸
- Page 52 is updated to note the *de minimis* estimation and circularity factors to determine whether a filer met the universal service *de minimis* standard for calendar year 2024.

Changes to the 2025 Form 499-Q Instructions:

- Page 19 is updated to make the certification language in the Form 499-Q instructions consistent with the language in the Forms 499-A instructions.
- **Circularity Factor Update:** The circularity factor is updated in the Form 499-Q instructions based upon the quarterly contribution factors subsequent to the Fourth Quarter 2023 contribution factor announcement.

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 contact Conor O'Donovan, Telecommunications Access Policy Division, Wireline Competition Bureau, at Conor.O'Donovan@fcc.gov or at (202) 418-1639.

Attachments:

Attachment A: 2025 FCC Form 499-A
Attachment B: 2025 FCC Form 499-A Instructions
Attachment C: 2025 FCC Form 499-Q
Attachment D: 2025 FCC Form 499-Q Instructions

- FCC -

⁸ VON submitted comments arguing that the proposed changes to the mergers and acquisitions language of the Form 499-A instructions provided conflicting advice to filers. *See* VON, Comments, WC Docket No. 06-122 (filed July 29, 2024) (*VON Comments*). VON proposed changes that VON claimed will provide more clarity to filers. *VON Comments* at 2. After consideration, and to avoid any potential confusion to filers, the Bureau accepted VON's proposed changes to the Form 499-A instructions reflected on page 21.

2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

APPROVED BY OMB
3060-0855

>>> Please read instructions before completing.<<<

Annual Filing -- due April 1, 2025

Block 1: Contributor Identification Information

During the year, filers must refile Blocks 1, 2 and 6 if there are any changes in Lines 104 or 112. See instructions.	
101	Filer 499 ID [If you don't know your number, contact the administrator at (888) 641-8722. If you are a new filer, write "NEW" in this block and a Filer 499 ID will be assigned to you.]
102	Legal name of filer
103	IRS employer identification number [Enter 9 digit number]
104	Name filer is doing business as
105	Telecommunications activities of filer [Select up to 5 boxes that best describe the reporting entity. Enter numbers starting with "1" to show the order of importance -- see instructions.] ☐ Audio Bridging (teleconferencing) Provider ☐ CAP/CLEC ☐ Interconnected VoIP ☐ Cellular/PCS/SMR (wireless telephony inc. by resale) ☐ Local Reseller ☐ Coaxial Cable ☐ Incumbent LEC ☐ Paging ☐ Interexchange Carrier (IXC) ☐ Prepaid Card ☐ Non-Interconnected VoIP ☐ Operator Service Provider ☐ Shared-Tenant Service Provider / Building LEC ☐ Payphone Service Provider ☐ SMR (dispatch) ☐ Private Service Provider ☐ Satellite Service Provider ☐ Other Local ☐ Other Mobile ☐ Other Toll ☐ Toll Reseller ☐ Wireless Data
If Other Local, Other Mobile or Other Toll is checked describe carrier type / services provided:	
106.1	Affiliated Filers Name/Holding Company Name (All affiliated companies must show the same name on this line.) Check if filer has no affiliates ☐ [Enter 9 digit number]
106.2	Affiliated Filers Name/Holding Company Name IRS employer identification number [Enter 10 digit number]
107	FCC Registration Number (FRN) [https://apps.fcc.gov/cors/userLogin.do] [For assistance, contact the CORES help desk at 877-480-3201 or CORES@fcc.gov]
108	Management company [if filer is managed by another entity]
109	Complete mailing address of reporting entity corporate headquarters
110	Complete business address for customer inquiries and complaints check if same address as Line 109 ☐ Street1 Street2 Street3 City State Zip (postal code) Country
111	Telephone number for customer complaints and inquiries [Toll-free number if available]
112	List all trade names used in the past 3 years in providing telecommunications. Include all names by which you are known by customers. a g b h c i d j e k f l
Use additional sheets if necessary. Each filer must provide all names used for telecommunications activities	
PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001	

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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

Page 2

Block 2-A: Regulatory Contact Information

201	Filer 499 ID [from Line 101]	
202	Legal name of filer [from Line 102]	
203	Person who completed this Worksheet	First MI Last
204	Telephone number of this person	() - ext -
205	Fax number of this person	() -
206	Email of this person [not for public release]	
207	Contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Telecommunications Reporting Worksheet should be sent. ☐ check if same name as Line 203 ☐ check if same address as Line 109	Office Attn: First name MI Last Phone () - ext- Fax () - Email [not for public release] Street1 Street2 Street3 City State Zip (postal code) Country

208	Billing address and billing contact person [Plan administrators will send bills for contributions to this address. Please attach a written request for alternative billing arrangements.] ☐ check if name and address same as Line 207	Company Attn: First name MI Last Phone () - ext- Fax () - Email [not for public release] Street1 Street2 Street3 City State Zip (postal code) Country

208.1 Email address pertaining to ITSP regulatory fee issues

Block 2-B: Agent for Service of Process

All carriers and providers of interconnected and non-interconnected VoIP must complete Lines 209 through 213. During the year, these filers must refile Blocks 1, 2, and 6 if there are any changes in this section. See Instructions			
209	D.C. Agent for Service of Process	Company	Attn: First name MI Last
210	Telephone number of D.C. agent	() -	ext -
211	Fax number of D.C. agent	() -	
212	Email of D.C. agent		
213	Complete business address of D.C. agent for hand service of documents	Street1 Street2 Street3 City State DC Zip	Attn: First name MI Last
214	Local/alternate Agent for Service of Process (optional)	Company	Attn: First name MI Last
215	Telephone number of local/alternate agent	() -	ext -
216	Fax number of local/alternate agent	() -	
217	Email of local/alternate agent		
218	Complete business address of local/alternate agent for hand service of documents	Street1 Street2 City State Zip (postal code) Country	

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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)										Page 3		
Block 2-C: FCC Registration and Contact Information				Filers must refile Blocks 1, 2 and 6 if there are any changes in this section. See Instructions.								
219	Filer 499 ID [from Line 101]											
220	Legal name of filer [from Line 102]											
221	Chief Executive Officer (or, highest ranking company officer if the filer does not have a chief executive officer)											
222	Business address of individual named on Line 221											
	check if same as Line 109 ☐											
223	Second ranking company officer, such as Chairman (Must be someone other than the individual listed on Line 221)											
224	Business address of individual named on Line 223											
	check if same as Line 109 ☐											
225	Third ranking company officer, such as President or Secretary (Must be someone other than individuals listed on Lines 221 and 223)											
226	Business address of individual named on Line 225											
	check if same as Line 109 ☐											
227	Indicate jurisdictions in which the filer provides service. Include jurisdictions in which service was provided in the past 15 months and jurisdictions in which service is likely to be provided in the next 12 months.											
☐ Alabama ☐ Alaska ☐ American Samoa ☐ Arizona ☐ Arkansas ☐ California ☐ Colorado ☐ Connecticut ☐ Delaware ☐ District of Columbia ☐ Florida ☐ Georgia ☐ Guam ☐ Hawaii ☐ Idaho ☐ Illinois ☐ Indiana ☐ Iowa ☐ Johnston Atoll ☐ Kansas ☐ Kentucky ☐ Louisiana ☐ Maine ☐ Maryland ☐ Massachusetts ☐ Michigan ☐ Midway Atoll ☐ Minnesota ☐ Mississippi ☐ Missouri ☐ Montana ☐ Nebraska ☐ Nevada ☐ New Hampshire ☐ New Jersey ☐ New Mexico ☐ New York ☐ North Carolina ☐ North Dakota ☐ Northern Mariana Islands ☐ Ohio ☐ Oklahoma ☐ Oregon ☐ Pennsylvania ☐ Puerto Rico ☐ Rhode Island ☐ South Carolina ☐ South Dakota ☐ Tennessee ☐ Texas ☐ Utah ☐ U.S. Virgin Islands ☐ Vermont ☐ Virginia ☐ Wake Island ☐ Washington ☐ West Virginia ☐ Wisconsin ☐ Wyoming												
228	Year and month filer first provided (or expects to provide) telecommunications in the U.S.										☐ Check if prior to 1/1/1999, otherwise:	
PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001												

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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

Page 4

Block 3: Carrier's Carrier Revenue Information

301	Filer 499 ID [from Line 101]					
302	Legal name of filer [from Line 102]					
Report billed revenues for January 1 through December 31, 2024. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars.						
See instructions regarding percent interstate and international.						
Revenues from Services Provided for Resale as Telecommunications by Other Contributors to Federal Universal Service Support Mechanisms						
Fixed local service						
Monthly service, local calling, connection charges, vertical features, and other local exchange service including subscriber line and						
303.1	PICC charges to IXC's					
Provided as unbundled network elements (UNEs)						
303.2	Provided under other arrangements					
Per-minute charges for originating or terminating calls						
304.1	Provided under state or federal access tariff					
Provided as unbundled network elements or other contract arrangement						
304.2	Local private line & business data service					
305.1	Provided to other contributors for resale as telecommunications					
305.2	Provided to other contributors for resale as interconnected VoIP					
306	Payphone compensation from toll carriers					
307	Other local telecommunications service revenues					
308	Support revenues received from Federal or state sources					
Mobile services (i.e., wireless telephony, paging, and other mobile services)						
309	Monthly, activation, and message charges except toll					
Toll services						
310	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.)					
311	Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
312	Long distance private line services					
313	Satellite services					
314	All other long distance services					
315	Total revenues from resale [Lines 303 through 314]					
See section III.C.2 of the instructions for the requirements applicable to revenue reported on this page. These records must be made available to the administrator or the FCC upon request.						
PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001						

2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)						Page 5
Block 4-A: End-User and Non-Telecommunications Revenue Information						
401	Filer 499 ID [from Line 101]					
402	Legal name of filer [from Line 102]					
Report billed revenues for January 1 through December 31, 2024. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate and international.		Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
			Interstate (b)	International (c)	Interstate Revenues (d)	International Revenues (e)
Revenues from All Other Sources (end-user, telecom, & non-telecom.)						
403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions					
Fixed local services						
Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges						
Traditional Circuit Switched						
404.1	Provided at a flat rate including interstate toll service – local portion					
404.2	Provided at a flat rate including interstate toll service – toll portion					
404.3	Provided without interstate toll included (see instructions)					
Interconnected VoIP						
404.4	Offered in conjunction with a broadband connection					
404.5	Offered independent of a broadband connection					
405	Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer					
406	Local private line & business data service [Includes the transmission portion of wireline broadband Internet access provided on a common carrier basis.]					
407	Payphone coin revenues (local and long distance)					
408	Other local telecommunications service revenues					
Mobile services (i.e., wireless telephony, paging, and other mobile services)						
409	Monthly and activation charges					
410	Roaming and air-time charges for toll calls, but excluding separately stated toll charges					
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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

Page 6

Block 4-A: Continued

	Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	International Revenues (e)
		Interstate (b)	International (c)	Interstate Revenues (d)	
<i>Toll services</i>					
411 Prepaid calling card (including card sales to customers) and non-carrier distributors) reported at face value of cards					
412 International calls that both originate and terminate in foreign points		0%	100%		
413 Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenues reported on Line 412					
Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PCCC pass-through, and other switched services not reported above)					
414.1 All, other than interconnected VoIP, including, but not limited to, itemized toll on wireline and wireless bills					
414.2 All interconnected VoIP long distance, including, but not limited to, itemized toll					
415 Long distance private line services					
416 Satellite services					
417 All other long distance services					
Revenues other than U.S. telecommunications revenues, including information services, inside wiring maintenance, billing and collection, customer premises equipment, published directory, dark fiber, Internet access, cable TV program transmission, foreign carrier operations, and non-telecommunications revenues (See instructions)					
418.1 bundled with circuit switched local exchange service					
418.2 bundled with interconnected VoIP local exchange service					
418.3 Other					
418.4 non-interconnected VoIP revenues not included in any other category					

Block 4-B: Total Revenue and Uncollectible Revenue Information

419 Gross billed revenues from all sources (incl. reseller & non-telecom.) [Lines 303 through 314 plus Lines 403 through 418]					
420 Gross universal service contribution base amounts [Lines 403 through 411 plus Lines 413 through 417] [See Table 3 in instructions.]					
421 Uncollectible revenue/bad debt expense associated with gross billed revenues amounts shown on Line 419 [See instructions.]					
422 Uncollectible revenue/bad debt expense associated with universal service contribution base amounts shown on Line 420					
423 Net universal service contribution base revenues [Line 420 minus line 422]					

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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

Block 5: Additional Revenue Breakouts

501	Filer 499 ID [from Line 101]			
502	Legal name of filer [from Line 102]			
Filers that report revenues in Block 3 and Block 4 must provide the percentages requested in Lines 503 through 510. See instructions for limited exceptions.				
Percentage of revenues reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 if no service was provided in the region.				
503	Southeast: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom (b)	%
504	Western: Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming	%	%	%
505	West Coast: California, Hawaii, Nevada, American Samoa, Guam, Johnston Atoll, Midway Atoll, Northern Mariana Islands, and Wake Island	%	%	%
506	Mid-Atlantic: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia	%	%	%
507	Mid-West: Illinois, Indiana, Michigan, Ohio, and Wisconsin	%	%	%
508	Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont	%	%	%
509	Southwest: Arkansas, Kansas, Missouri, Oklahoma, and Texas	%	%	%
510	Total: [Percentages must add to 0 or 100.]	%	%	%

Revenues from resellers that do not contribute to universal service support mechanisms are included in Block 4-B, Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded the filer has the option of identifying such revenues below. **As stated in the instructions, you must have in your records the FCC Filer 499 ID for each customer whose revenues are included on Line 511. (See instructions.)**

		(a)	(b)
	Total Revenues		Interstate and International
512	Revenues from resellers that do not contribute to Universal Service Gross TRS contribution base amounts [Lines 403 through 417 plus Line 418.4 less Line 511]		
513	Uncollectible revenue/bad debt expense associated with TRS contribution base amounts shown on Line 512		
514	Net TRS contribution base revenues [Line 512 less Line 513]		

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2025 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2024 Revenues)

Page 8

Block 6: CERTIFICATION: to be signed by an officer of the filer

601 Filer 499 ID [from Line 101]

602 Legal name of filer [from Line 102]
 Section IV of the instructions provides information on which types of filers are required to file for which purposes. Any filer claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which filers meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify below.]

603 I certify that the filer is exempt from contributing to:
 Universal Service ☐ TRS ☐ NANPA ☐ LNP Administration ☐

Provide explanation below:

604 Please indicate whether the filer is ☐ State or Local Government Entity ☐ I.R.C. § 501 or State Tax Exempt (see instructions) ☐

605 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's rules. ☐

I certify that I am an officer of the above-named filer as defined in the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named filer is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in section III-B of the instructions.

606 Signature _____

607 Printed name of officer First MI Last

608 Position with reporting entity

609 Business telephone number of officer () - ext -

610 Email of officer [not for public release]

611 Date

612 Check those that apply ☐ Original April 1 filing for year ☐ New filer, registration only ☐ Revised filing with updated registration ☐ Revised filing with updated revenue data

Do not mail checks with this form. **File this form online:** <https://forms.universalservice.org/portal/login>
 For additional information regarding this worksheet contact: (888) 641-8722 or via email: Form499@usac.org

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FCC Form 499-A / 2025

FCC Form 499-A, September 2024

Approved by OMB

OMB Control Number 3060-0855

Estimated Average Burden Hours Per Response: 13.5 Hours

**2025 Telecommunications Reporting Worksheet Instructions
(FCC Form 499-A)**

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File the FCC Form 499-A online at <https://forms.universalservice.org>

I. INTRODUCTION

The Communications Act of 1934, as amended, requires that the Commission establish mechanisms to fund universal service (USF), interstate telecommunications relay services (TRS), the administration of the North American Numbering Plan (NANPA), and the shared costs of local number portability administration (LNPA).¹ To accomplish these congressionally directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice-over-Internet-Protocol (VoIP) service providers) to report each year on the Telecommunications Reporting Worksheet the revenues they receive from offering service.² The administrators of each of these programs use the revenues reported on this Worksheet to calculate and assess any necessary contributions. The Commission also uses the revenue data reported on this Worksheet to calculate and assess Interstate Telecommunications Service Provider (ITSP) regulatory fees.³

¹ 47 U.S.C. §§ 151, 225, 251, 254, 616.

² See 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(c)(5)(iii)(A) and (B).

³ See 47 U.S.C. § 159(a), (b)(1)(A), (g) (authorizing the Commission to collect annual regulatory fees to recover the costs of enforcement, policy and rulemaking, user information, and international activities).

Although some Telecommunications Reporting Worksheet filers may not need to contribute to each of the support and cost recovery mechanisms, all telecommunications carriers and certain additional telecommunications providers must file. These instructions explain which filers must contribute to particular mechanisms, but filers should consult the specific rules that govern contributions for each of the mechanisms.⁴ In general, contributions are calculated based on each filer's end-user telecommunications revenue information, as filed in this Worksheet.

By filing this Worksheet, filers may also satisfy their obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process⁵ and their obligations to register with the Federal Communications Commission.⁶

II. CONTACT INFORMATION

If you have questions about the Worksheet or the instructions, you may contact:

Universal Service Administrator	form499@usac.org (888) 641-8722

If you have questions regarding contribution amounts, billing procedures, or the support and cost recovery mechanisms, you may contact:

Universal Service Administrator:	form499@usac.org (888) 641-8722

TRS Administrator:	trs@rolkaloube.com (717) 585-6605

NANPA Billing and Collection Agent:	nanp@welchllp.com (613) 760-4512

Local Number Portability Administrator:	NPACBilling@iconnectiv.numberportability.com (844) 560-8050

ITSP Regulatory Fees	(877) 480-3201

⁴ See 47 CFR §§ 52.17 (numbering administration), 52.32 (local number portability), 54.706 (universal service), 64.604 (TRS).

⁵ 47 U.S.C. § 413; see 47 CFR § 1.47(h).

⁶ 47 CFR § 64.1195.

III. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. WHO MUST FILE

1. GENERAL INFORMATION

With very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States⁷ must file this Worksheet. In addition to filing this form most filers must contribute to the universal service, TRS, NANPA, and LNPA funding mechanisms. This section provides a short summary to assist carriers and service providers in determining whether they must contribute to one or more of the mechanisms. Filers should consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms.

FCC Form 499-A is a multi-purpose form. It is used for at least seven purposes:

Annual filing requirements:

1. Report revenues for purposes of the federal Universal Service Fund (USF);
2. Report revenues for purposes of the federal Telecommunications Relay Services Fund (TRS);
3. Report revenues for the administration of the North American Numbering Plan (NANPA);
4. Report revenues for the shared costs of local number portability administration (LNPA);
5. Report revenues for calculating and assessing Interstate Telecommunications Service Provider (ITSP) regulatory fees;

One-time filing requirements (with obligation to revise if information changes):

6. Satisfy obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process;
7. Fulfill obligations to register with the Federal Communications Commission under 47 CFR § 64.1195.

If you are subject to one or more of the above requirements, you must file FCC Form 499-A.

1. Federal Universal Service Fund — Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms. *See* 47 CFR § 54.706.

2. Telecommunications Relay Services — Every common carrier⁸ providing telecommunications services and every VoIP provider (including interconnected and non-interconnected) must contribute to the TRS Fund. *See* 47 CFR §§ 64.601(b), 64.604.

3. Non-Interconnected VoIP Service Providers — All providers of “non-interconnected VoIP service” (as defined in section 64.601(a) of the Commission's rules) with end-user revenues subject to TRS

⁷ For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

⁸ “Common carrier” or “carrier” means “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy. . .” 47 U.S.C. § 153(11).

contributions must file this Worksheet in order to register with the Commission and report their revenues for purposes of calculating TRS contributions.⁹

4. North American Numbering Plan Administration — All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration. *See* 47 CFR § 52.17.

5. Shared Costs of Local Number Portability — The shared costs of long-term number portability attributable to a regional database shall be recovered from all telecommunications carriers and interconnected VoIP providers providing service in that region. *See* 47 CFR § 52.32.

6. ITSP Regulatory Fees — Congress requires the Commission to assess and collect regulatory fees “to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities.” *See* 47 CFR § 159(a).

7. Designation of Agent for Service of Process — For more information on this requirement, see the instructions for Block 2-B.

8. FCC Registration — For more information on this requirement, see the instructions for Block 2-C.

2. ADDITIONAL INFORMATION REGARDING USF CONTRIBUTION REQUIREMENTS

Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms.

- The term “telecommunications” refers to the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.¹⁰
- For the purpose of filing, the term “interstate telecommunications” includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging services; dispatch and operator services; mobile radio services;¹¹ access to interexchange service; business data services; wide area telecommunications services (WATS); subscriber toll-free and 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; Frame Relay services; asynchronous transfer mode (ATM) services; Multi-Protocol Label Switching (MPLS) services; audio bridging services;¹² and interconnected VoIP services.

⁹ *See Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14537, para. 12 (2011) (*2011 TRS Contributions Order*) (adding definition of “non-interconnected VoIP service” to the Commission’s TRS rules at section 64.601(a)). *See* 47 C.F.R. § 64.601(a).

¹⁰ 47 U.S.C. § 153(50).

¹¹ *See Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, WC Docket No. 06-122, Order, 23 FCC Rcd 12836 (WCB 2008).

¹² *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10737–38, para. 22 (2008) (*InterCall Order*), *petition for reconsideration denied, Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, 27 FCC Rcd 898 (2012), *subsequent history omitted*.

- Note that all incumbent (ILEC) and competitive (CLEC) local exchange carriers provide access services and, therefore, provide interstate telecommunications. No filing exemptions exist for data or non-voice services.
- There is no filing exception for entities that offer services to a narrow or limited class of users. Thus filers include:
 - Entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis.
 - Most telecommunications carriers and all interconnected VoIP providers including those that qualify for the *de minimis* exception under the Commission's universal service rules.¹³
 - Owners of pay telephones, also known as "pay telephone aggregators."
- Three types of non-common-carrier telecommunications providers may, under the circumstances set forth below, not be required to contribute to USF directly: (a) *de minimis* telecommunications providers; (b) government, broadcasters, schools, and libraries; and (c) systems integrators and self-providers.

a. Exception for USF *de minimis* telecommunications providers

Telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.¹⁴

- Providers that offer telecommunications for a fee exclusively on a non-common carrier basis need not file this Worksheet if their contribution to the universal service support mechanisms would be *de minimis* under the universal service rules. Note that entities providing solely private line service may nevertheless be considered common carriers if they offer their services directly to the public or to such classes of users as to be effectively available directly to the public.¹⁵
- Telecommunications carriers providing telecommunications services on a common-carriage basis and interconnected VoIP providers need not contribute directly to the universal service support mechanism if they meet the *de minimis* standard.¹⁶ However, they must file this Worksheet because they must contribute to other support mechanisms (TRS, NANPA or LNPA). *See* section III.A.1 for information regarding contribution requirements for TRS, NANPA, and LNPA. Such providers need not file an FCC Form 499-Q.¹⁷

¹³ *See* 47 CFR § 54.708.

¹⁴ *See id.*

¹⁵ *See* 47 U.S.C. § 153(53).

¹⁶ A resale provider may contribute directly to the USF by signing a resale certificate or may be treated as an end user by its underlying carrier and therefore may contribute indirectly as a result of USF pass-through charges. *See, e.g.,* section IV.C.4 "Attributing Revenues from Contributing Resellers and From End Users."

¹⁷ Sections 54.706, 54.711, and 54.713 of the Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund and file a FCC Form 499-Q on February 1, May 1, August 1, and November 1 each year. 47 CFR §§ 54.706, 54.711, 54.713. The FCC Form 499-Q sets forth information that the contributor must submit, so that the Administrator of the universal service support mechanisms may calculate and assess contributions. *See* Telecommunications Reporting Worksheet, FCC Form 499-Q (2025) Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms, OMB Control Number 3060-0855 (Insert Release Date).

Providers who may be *de minimis* should complete the table contained in Appendix A to determine whether they meet the *de minimis* standard.

- Use the table in Appendix A to calculate estimated universal service contributions for the period January 2024 through December 2024.
 - To complete this table, providers must first complete Block 4 of the Worksheet and enter the amounts from Lines 423(d) on Appendix A line 1, and 423(e) on Appendix A line 2.
- Providers whose estimated contributions to universal service support mechanisms would be less than \$10,000 are considered *de minimis* for universal service contribution purposes and will not be required to contribute directly to universal service support mechanisms.

b. Exception for government, broadcasters, schools, and libraries

The following non-common-carrier entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet unless they contribute to TRS, LNP, or NANPA:¹⁸

- Government entities that purchase telecommunications services in bulk on behalf of themselves, such as state networks for schools and libraries.
- Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules or any entity providing interstate telecommunications exclusively to public safety or government entities that do not offer services to others.
- Broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers.

c. Exception for systems integrators and self-providers

Systems integrators: Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service.¹⁹ Systems integrators provide integrated packages of services and products that may include, but are not limited to computer capabilities, interstate telecommunications, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision and maintenance of telecommunications and computer equipment, and help desk functions.²⁰ However, systems integrators must file this Worksheet if they have contribution obligations to other support mechanisms (TRS, NANPA or LNPA).

Self-Providers: Entities that provide telecommunications only to themselves or to commonly-owned affiliates need not file.²¹

¹⁸ See *Universal Service First Report and Order*, 12 FCC Rcd at 9187, para. 800.

¹⁹ Note that systems integrators that have contribution obligations to other support mechanisms (TRS, NANPA, or LNPA) must file this worksheet.

²⁰ See *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5471-75 (1997).

²¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 9187, para. 800.

d. Filing Exemption for Marketing Agents

Marketing agents, i.e., entities that market services on behalf of a telecommunications provider, are not telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from the provider's revenues. A telecommunications reseller is not a marketing agent and must file this Worksheet.

B. WHICH TELECOMMUNICATIONS PROVIDERS MUST CONTRIBUTE FOR WHICH PURPOSES

Table 1 summarizes which telecommunications carriers and service providers must directly contribute for particular purposes. This chart is provided for informational purposes only. It is not intended to be exhaustive, nor is it intended to serve as legal guidance or precedent. Filers are instructed to consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms. See 47 CFR §§ 52.17, 52.32, 54.706, 64.604.

Table 1: Which Telecommunications Providers Must Contribute Directly for Which Purposes

Type of filer	Universal Service	TRS	NANPA	LNPA
Non-interconnected VoIP providers with no other telecommunications revenues		X		
<i>De minimis</i> payphone aggregators that do not also have telecommunications carrier revenues		X		
Other payphone aggregators that do not also have telecommunications carrier revenues	X	X		
<i>De minimis</i> telecommunications providers (including audio-bridging service providers) with no telecommunications service revenues				
Other telecommunications providers (including audio-bridging providers) with no telecommunications service revenues	X			
Telecommunications carriers that provide only intrastate service		X	X	X
Telecommunications carriers that provide services only to other universal service contributors			X	X
Telecommunications carriers that provide only international services		X	X	X

<i>De minimis</i> interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and <i>de minimis</i> interconnected VoIP providers		X	X	X
All other interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and all other interconnected VoIP providers	X	X	X	X

As shown above, some providers may be exempt from contributing to USF, but nevertheless must file this Worksheet because they are required to contribute to TRS, NANPA, or LNPA. If an entity is not required to contribute to any of these support mechanisms, then it is not required to file this Worksheet.

- For USF purposes, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of USF pass-through surcharges.
- Providers who do not file this Worksheet because they are *de minimis* for USF contribution purposes, and need not file for any other purpose, should retain the table contained in Appendix A and documentation of their contribution base revenues for five calendar years after the date each Worksheet is due.²²
- Interconnected VoIP providers who are *de minimis* must file this Worksheet and retain the table and documentation of their contribution base revenues for five calendar years after the date each Worksheet is due.²³

FILING BY LEGAL ENTITY

Each legal entity providing interstate telecommunications for a fee or providing interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must separately complete and file a copy of the Worksheet, except as provided below.²⁴ Entities with distinct articles of incorporation, articles of formation, or similar legal documents are separate legal entities. Each legal entity, affiliate, and subsidiary must identify its ultimate controlling parent or entity, or provide a common identifier for all of its affiliated filers on Block 1, Line 106.

²² See 47 CFR § 54.706(e) (“Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission’s universal service rules”); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386–87, para. 27 (2007) (*USF Comprehensive Review Order*). Section § 54.711(a) of the Commission’s rules, 47 CFR § 54.711, also requires contributors to “maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request.”

²³ *Id.*

²⁴ See 47 CFR § 64.1195 (outlining the Commission’s registration requirements).

As an alternative to each affiliate filing separately, entities may file on a consolidated basis but must certify each year that they meet all of the following conditions:²⁵

- A single entity oversees the management of all affiliated systems;
- A single entity sends bills to customers identifying it (or a trade name) as the service provider, rather than identifying the individual legal entities;
- All revenues are posted to a single general ledger;²⁶
- If separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- Customers have a single point of contact;
- The consolidated filer acknowledges that process served on it would represent process served on any or all of the affiliated legal entities;
- The consolidated filer agrees to document and resolve all slamming complaints that might be served on either it or any of the affiliated legal entities;²⁷
- The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- The consolidated filer acknowledges that its universal service, TRS, LNP, NANPA, and regulatory fee obligations will be based on data provided in the consolidated Worksheet filings, that it bears the responsibility of satisfying those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- The consolidated filer acknowledges that it: (1) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, TRS, LNP, NANPA, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (2) was not left with unreasonably small capital as a result of such undertaking or payments; and (3) was not left unable to pay debts as they matured as a result of such undertaking or payments.²⁸

This certification should be filed with the Commission's Data Collection Agent (*see* address in Table 3) and must also include:

- A list of the legal names of all the legal entities covered by the filing. See instructions to Line 112 regarding the reporting of these legal names on the Worksheet.

²⁵ See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (Consolidated Reporting Order); Federal-State Joint Board on Universal Service *et al.*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (2002 First Contribution Methodology Order and FNPRM).

²⁶ The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

²⁷ A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filer or any of its affiliated legal entities that also are not subject to the slamming regulations.

²⁸ For purposes of this certification, the term “insolvent” means either unable to pay debts when due or having liabilities greater than assets. See 11 U.S.C. § 101(32).

- The FCC Form 499 Filer IDs of all the legal entities covered by the filing
- The consolidated filer's FRN
- For wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing

Filers filing on a consolidated basis should be aware that any penalties associated with failure to pay or underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

C. HOW TO FILE

1. NO FILING FEE

There is no fee to file this form.

2. WHEN TO FILE

This section provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day. *See* 47 CFR § 1.4(e)(1).

Table 2: Filing Schedule for One-Time Requirements

What to file	When to file	Where to file
New telecommunications carriers and other telecommunications providers must <u>register</u> with the Commission when they begin to provide service.²⁹ Registration with the Commission includes obtaining an FCC registration number ("FRN") from the Commission registration system ("CORES") and obtaining a Filer ID from USAC's E-File system. If a new filer had already started providing telecommunications services prior to its registration with the FCC and obtaining a 499 Filer ID from USAC, it must file FCC Forms 499-A for all prior applicable years in which it provided telecommunications services and/or VoIP. New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process within the District of Columbia. Although alternate agents may be included in the filing, a resident D.C. agent must be designated. Carriers that hold international section 214 authorizations must designate a U.S. citizen or U.S. lawful permanent resident as their agent for service of process.	Upon beginning to provide service, but no later than 30 days after beginning to provide service.	<u>FCC (to obtain an FRN)</u> https://apps.fcc.gov/cores/userLogin.do <u>USAC (to obtain a 499 Filer ID)</u> https://www.usac.org/service-providers/contributing-to-the-usf/register-for-a-499-id/ Such information is provided at Page 2, Block 2 of the FCC Form 499-A.

²⁹ Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

What to file	When to file	Where to file
Filers must update their registration information, including a DC Agent for Service of Process in accordance with these instructions to the FCC Form 499-A.	Within one week of the contact information change.	Filers wishing to update Preparer information, headquarter address, billing contact information, or DC Agent for Service of Process, can submit either an FCC Form 499-A or an FCC Form 499-Q or, for billing-related matters only, email USAC's billing department. ³⁰ Filers wishing to update any other information must submit a revised FCC Form 499-A. For more information, see https://www.usac.org/service-providers/contributing-to-the-usf/making-revisions/
Filers that cease providing telecommunications must deactivate their Filer ID with USAC by submitting a letter with termination date and information on their successor entity to USAC. Filers must also update their CORES ID information with the Commission	Within 30 days of the date that the company ceased providing service.	<u>FCC</u> https://apps.fcc.gov/cores/userLogin.do <u>USAC</u> https://www.usac.org/service-providers/contributing-to-the-usf/manage-your-499-id/

Table 3: Filing Schedule for Annual Reporting Requirements

What to file	When to file	Where to file
Completed FCC Form 499-A	April 1	<u>Data Collection Agent</u> https://forms.universalservice.org
Completed FCC Form 499-Q (universal service contributors only)	February 1 May 1 August 1 November 1	<u>Data Collection Agent</u> c/o Universal Service Administrative Company https://forms.universalservice.org
Traffic studies relied on by providers to report interstate and/or international revenues on FCC Form 499-A <i>See section IV.C.5.h for format and content requirements for traffic studies</i>	April 1	<u>Data Collection Agent</u> - via Email c/o Universal Service Administrative Company form499@usac.org
Consolidated filer certification <i>See section III.B for format and content requirements for consolidated filer certification</i>	April 1	<u>Data Collection Agent</u> - via Email c/o Universal Service Administrative Company form499@usac.org

Do not send universal service, TRS, NANPA or LNPA contributions with the Worksheet or to any of the above listed addresses. The appropriate administrators will calculate the amount of contribution due and send a notification to the billing contact email address identified on Line 208 of the FCC Form 499-A that

³⁰ Filers seeking to update limited DC agent information such as an address and/or telephone number change for more than twenty registrations at one time may contact USAC and request permission to submit a summary Excel-styled document containing these changes. Generally, changing an agent requires submission of an FCC Form 499-A with the accompanying officer certification.

the statement is ready to be viewed in E-File. See Table 4 for contribution bases used by the USF, TRS, NANPA and LNPA administrators to determine contribution obligations.

3. ELECTRONIC FILING

Filers capable of accessing the Internet are required to file this form electronically. For information on filing electronically, go to <https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/>.

Filers may file the consolidated filer certifications and traffic studies by submitting paper copies to: **Form 499 Data Collection Agent c/o USAC, 700 12th Street N.W., Suite 900, Washington, D.C. 20005.**

D. OBLIGATION TO FILE REVISIONS

Line 612 provides check boxes to show whether the Worksheet is the original April 1 filing for the year, a registration form for a new filer, a revised filing with updated registration information, or a revised filing with updated revenue data for the year.

Filers must submit a revised Form 499-A if there is any change in any of the following types of information:

- Filer identification in Block 1
- Regulatory contact information in Block 2-A
- Agent for service of process in Block 2-B
- FCC registration information in Block 2-C

Filers must also submit revised worksheets if they discover an error in their revenue data.

- Since companies generally close their books for financial purposes by the end of March, such filers should base the April filing on closed books.
- In filing a revised Worksheet, filers should not include routine out-of-period adjustments to revenue data unless such adjustments would affect a reported amount by more than ten percent.
- **Filers must submit any revised Worksheet that would result in decreased contributions by March 31 of the year after the original filing due date.**³¹

Filers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units.

- If a filer that submitted a Form 499-A no longer exists, its successor company is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent.
- If the operations of an entity ceased during the previous calendar year due to an acquisition by or merger with a successor, the successor company must submit the acquired entity's FCC Form 499-A Worksheet and report all pre-acquisition revenue for that calendar year. If the successor company has E-File access to the account of the acquired entity, it may submit the Worksheet electronically, otherwise it may submit a hard copy Worksheet to USAC. It is the successor company's responsibility to ensure that the revenues for both companies for the previous calendar year are accounted for in their entirety on the respective company's quarterly and annual Worksheets.

³¹ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, 20 FCC Rcd 1012, 1013, para. 2 (WCB 2004), *pet. for recon. and applications for review pending*.

- Either the entity that ceased operations or the successor entity may owe additional universal service contributions or may be due refunds, depending on how its FCC Form 499-A Worksheet compares to previously filed FCC Form 499-Q Worksheets.
 - Such entities are not liable for TRS, LNP, or NANPA contributions for the upcoming year. Check the appropriate boxes on Line 603 and write “Not in business as of filing date” on the explanation line.

E. RECORDKEEPING

Filers shall maintain records and documentation to justify information reporting on the Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years.³² Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission’s Office of Inspector General, to the Universal Service Administrative Company (USAC), and to auditors upon request.³³ Review by the Commission or USAC may cover any existing corporate records, not just those specifically maintained for these purposes.³⁴ Entities acquiring carrier operations through consolidation, merger, etc., must maintain the records of the acquired entity.³⁵

F. COMPLIANCE

Failure to file the Worksheet, submit traffic studies (if applicable), submit supporting documentation upon request, and pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.³⁶ In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.³⁷ Inaccurate or untruthful information contained in the Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.³⁸

G. ROUNDING OF NUMBERS AND NEGATIVE NUMBERS

Dollar Amounts. — Reported revenues in Blocks 3, 4, and 5 greater than one thousand dollars may be rounded to the nearest thousand dollars. Dollar amounts may be reported in whole dollars. For example, \$2,271,881.93 could be reported at \$2,271,882 or \$2,272,000, but not \$2272 thousand, \$2,270,000.00, or \$2.272 million. Enter \$0 in any line for which the filer had no revenues for the year.

³² See 47 CFR § 54.706(e) (“These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.”).

³³ See *id.*; 47 CFR § 54.711(a).

³⁴ See 47 U.S.C. § 218.

³⁵ See 47 CFR § 42.1.

³⁶ In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. See 47 CFR § 1.1910; *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*, MD Docket No. 02-339, 19 FCC Rcd 6540 (2004).

³⁷ See 47 CFR § 54.713 (universal service); 47 CFR § 64.604(c)(5)(iii)(A) and (B) (TRS); see also 47 CFR § 52.17(b) (NANPA); 47 CFR § 52.32(c) (LNPA).

³⁸ See 47 CFR § 54.711.

Negative Numbers. — Filers are directed to provide billed revenues without subtracting any expenses, allowances for uncollectibles, or settlement payments and without making out-of-period adjustments. Therefore, do not enter negative numbers on any billed revenue lines on the Worksheet. See instructions for Lines 421 and 422 regarding uncollectibles.

IV. SPECIFIC INSTRUCTIONS

A. BLOCK 1: FILER IDENTIFICATION INFORMATION

Block 1 of the Telecommunications Reporting Worksheet reports identification information.

Line 101	499 Filer ID

USAC assigns an FCC Form 499 Filer ID number once a company completes the online registration process at <https://efile.universalservice.org/ContributorRegistration/V2/>. This number is then used for the company to file subsequent FCC Forms 499. Filer 499 ID numbers can be found at:

- FCC Form 499 Filer Database (<http://apps.fcc.gov/cgb/form499/499a.cfm>)
- Telecommunications Provider Locator (<https://www.fcc.gov/encyclopedia/telecommunications-provider-locator>)

Line 102	Legal Name of Filer

Enter the legal name of the filer as it appears on articles of incorporation or articles of formation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis. See section III.B.

Line 103	IRS Employer Identification Number

Enter the Internal Revenue Service (IRS) employer identification number (EIN) for the filer, which should be the same EIN that the company uses to file any federal taxes, if the filer offers services subject to such taxes.

- Do not use individual social security numbers for the federal EIN.
- If a filer lacks an EIN (i.e. has no taxpayer identification number to provide other than an individual social security number), it should contact USAC (see section II for contact information) so that it can be assigned an alternative identification number.
- Consolidated filers must provide the EIN of the holding company.

Line 104	Doing Business As Name

Enter the principal name under which the filer conducts telecommunications activities, typically the name that appears on customer bills or the name used when service representatives answer customer inquiries.

Line 105	Telecommunications Activities of Filer

Mark the boxes that describe the telecommunications activity or activities of the filer. If more than one is appropriate, label the activities in order of importance to the filer's business. Enter a 1 in the box that is the most important activity, a 2 in the next most important, etc., but select no more than 5 categories. An explanation of the categories appears in Appendix B.

Line 106	Affiliated Filers/ Holding Company Information

Enter a common identifier for all affiliated filers (the "Affiliated Filers Name"). This is typically the name of the filer's holding company or controlling entity, if any. Amongst a large group of affiliates, this may be the name of the predominant commonly owned or controlled entity. All reporting affiliates or

commonly owned entities should have the same Affiliated Filers Name and IRS employer identification number appearing on Line 106.1 and 106.2 respectively. For those entities also required to submit information to the Broadband Data Collection (BDC) system, use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions to indicate common ownership or control.³⁹

- Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."⁴⁰ For this purpose, the term "owns" means "to own an equity interest (or the equivalent thereof) of more than 10 percent."⁴¹
- If the filer has no affiliates, check the appropriate box on Line 106.

Line 107	FCC Registration Number

Enter the FCC Registration Number (FRN) of the filer. The FRN is a ten-digit number that includes a check-digit and is used to identify an entity within all Commission Licensing/Filing systems and the Commission's Revenue Accounting Management Information System (RAMIS). The number is assigned by the Commission Registration System (CORES). For more information, see <https://apps.fcc.gov/corec/userLogin.do>.

Line 108	Management Company

Enter the name of the management company if the filer is managed by an entity other than itself. If the filer and one or more telecommunications provider(s) are commonly managed, then each should show the same management company on Line 108. Filers need not be affiliated to have a common management company. The management company would typically be the point of contact for the administrators of the support mechanisms.

Line 109	Mailing Address of Corporate Headquarters

Enter the complete mailing address of the corporate headquarters of the filer.

Lines 110-111	Business Address/ Telephone Number for Customer Inquiries and Complaints

Line 110. — Enter a business address for the filer that could be used either for customer inquiries or that parties could use to contact the filer in order to resolve complaints. Check the box if this address is the same as the mailing address of the corporate headquarters on Line 109.

Line 111. — Enter a telephone number that can be used to resolve customer complaints, for customer service, or for billing inquiries, such as a customer toll-free number.

Line 112	Trade Names

Enter all names that the filer used in the past three years for providing telecommunications.

³⁹ The Commission adopted an Order ending the collection of broadband deployment data through the FCC Form 477 in December 2022. See *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., 37 FCC Rcd 14957, 14960-61, paras. 11-10 (2022). Pursuant to the Order, the Commission continues to collect broadband and voice subscription data using the FCC Form 477, but filers submit such data solely through the BDC system. *Id.* at para. 13.

⁴⁰ See 47 U.S.C. § 153(2).

⁴¹ *Id.*

- Enter all names by which the filer would be known to customers, government bodies, creditors, the press, etc.
- Consolidated filers should provide all names used by all telecommunications affiliates covered by the filing.
- The list must include the filer's billing agents if those parties, rather than the filer, are identified on customer bills.
- The list should also include names of predecessor companies that would have contributed to universal service, TRS, NANP, or LNP or filed a Telecommunications Reporting Worksheet in the prior year. In such cases, include the prior Filer 499 ID as part of the name, as this information will be used by the administrators in instances where other information indicates that a non-filer might exist and also to ensure that entities are not billed improperly for predecessor companies that no longer exist.
- If there is insufficient space to enter all names, contact USAC.

B. BLOCK 2: CONTACT INFORMATION

Block 2 of the Telecommunications Reporting Worksheet reports contact information for regulatory and filing purposes.

1. BLOCK 2-A: REGULATORY CONTACT INFORMATION

Line 201	499 Filer ID

Enter the Filer 499 ID from Line 101.

Line 202	Legal Name of Filer

Enter the legal name of the filer from Line 102.

Line 203-206	Person Who Completed This Worksheet/ Contact Information

Enter the name and telephone number of the person who filled out the FCC Form 499. An email address is also required and will not be publicly released. This person should be able to provide clarifications or additional information and, if necessary, serve as the first point of contact if either the Commission or an administrator should choose to verify or audit information provided in the Worksheet.

Line 207	Corporate Office to Which Correspondence Should Be Sent

Enter the contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Worksheet should be sent. An email address is also required and will not be publicly released. USAC does NOT send Worksheets to this address; all Worksheets must be filed using USAC's electronic filing system. Failure to receive a Worksheet from an administrator or the FCC does not relieve the filer from its obligation to file in a timely fashion.

Line 208	Billing Contact Information

Line 208 — Enter a billing contact person name, address, and email address for administrators to send billing information for contributions to the Universal Service Fund. The email address will not be publicly released. Notifications of issued invoices for USF contributions, which may be viewed in E-File, will be sent to the email address specified. Information on establishing electronic fund transfer and bills TRS, NANPA, or LNPA contributions will be sent to this address unless other arrangements are made via written request.

Line 208.1 — An FCC ITSP regulatory fee bill, if due, will be sent to the email address specified on Line 208.1. FCC inquiries regarding ITSP regulatory fees will also be sent to this email address. Carrier

questions regarding ITSP regulatory fee bills should be directed to the FCC Financial Operations Help Desk, 877-480-3201.

Although a filer may or may not use the same contact information for Lines 207 and 208, it is the filer's responsibility to ensure that accurate information is provided on both lines. A filer will be responsible for any late fees, interest or penalties incurred as a result of its failure to provide accurate contact information on this form.

2. BLOCK 2-B: AGENT FOR SERVICE OF PROCESS

Section 413 of the Act requires each common carrier "to designate in writing an agent in the District of Columbia" upon whom all notices, process, orders, and decisions made by the Commission may be served on behalf of that carrier in any proceeding pending before the Commission. The Commission has also extended this requirement to interconnected and non-interconnected VoIP providers.⁴⁷ Carriers that hold international section 214 authorizations must designate a U.S. citizen or U.S. lawful permanent resident as their agent for service of process.⁴⁸

Lines 209-218	Agent for Service of Process
	Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must enter the company name, contact person name, business address, email address, telephone or voicemail number for their designated D.C. Agent.
	Carriers, interconnected VoIP providers, and non-interconnected VoIP providers <i>must</i> designate a <i>single</i> agent for service of process in D.C. for all Commission business. Service of any notice, process, orders, decisions, and requirements of the Commission may be made upon the filer by leaving a copy thereof with this designated agent during normal business hours at the agent's office or other usual place of residence.
	In addition to this information, the filer may elect to provide a local or alternate agent for service of process located outside D.C. Filers other than carriers, interconnected VoIP providers, and non-interconnected VoIP providers need only report one agent for service of process, whether located inside D.C. or otherwise. Although the FCC Form 499-A permits carriers, interconnected VoIP providers, and non-interconnected VoIP providers to designate a preferred alternate or local agents for service of process, each designated agent for a particular carrier, interconnected VoIP provider or non-interconnected VoIP provider must accept service for all purposes relating to Commission business. A carrier, interconnected VoIP provider or non-interconnected VoIP provider may not limit a designated agent's ability to accept service on behalf of the carrier, interconnected VoIP provider or non-interconnected VoIP provider by subject matter, jurisdiction, affiliate or any other grounds. The Commission may assume that the local or alternate agent is the filer's preferred destination for all service of process.
	New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process, must register with the FCC within 30 days of providing service, and all carriers or VoIP providers (including interconnected and non-interconnected) must notify USAC within one week if the contact information changes for their D.C. Agent. See Table 2 for more information.

⁴⁷ 47 U.S.C. § 413; see 47 CFR § 1.47(b) (interconnected VoIP providers), *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14352, 14542, para. 21 (2011) (non-interconnected VoIP providers).

⁴⁸ 47 U.S.C. § 413; see 47 CFR § 1.47(b); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927, 10951-52, paras. 68-69, (2020) (*Executive Branch Process Reform Report and Order*).

3. BLOCK 2-C: FCC REGISTRATION INFORMATION

New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service. Carriers and other telecommunications providers must update registration information within one week of a material change. Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

Lines 219-226 FCC Registration Information

As explained above, virtually all carriers filing the FCC Form 499 are considered to be interstate carriers. They, along with interconnected and non-interconnected VoIP providers, must provide the names and business addresses of their Chief Executive Officer, Chairman, and President.

Refer to the following list for instructions for different types of providers:

- If the filer does not have one or more of these officers, then names should be supplied for the three most senior-level officers of the filer.
- If the same person occupies more than one position, then names should be supplied for the three most senior-level officers of the filer.
- If the filer is a sole proprietorship, list only one name.
- If the filer is a partnership, list the managing partner on Line 221.
- If the filer is owned by two partners, list the second partner on Line 223.
- If there are three or more partners, list information for the managing partner and the two other partners with the greatest financial interest in the partnership.

For purposes of this filing, an officer is an occupant of a position listed in the article of incorporation, articles of formation, or other similar legal document.

Line 227 Jurisdictions in Which Filer Provided/ Will Provide Service

Check those jurisdictions where the filer provided telecommunications service or interconnected VoIP service in the past 15 months, and any additional jurisdictions in which the filer expects to provide such services in the next 12 months. Identify jurisdictions where customers physically obtain service, and for switched services, identify jurisdictions where customers can originate calls. For services where the called party pays, however, also identify jurisdictions where calls terminate.⁴⁴ For example, an operator service provider that handled terminate calls originating in New Jersey and terminating collect in New Jersey, New York, and Pennsylvania would identify those three states as jurisdictions served.

Line 228 Year and Month that Filer First Provided/ Will Provide Service

Enter the year and month that the filer first provided telecommunications or interconnected VoIP service. If not yet providing either type of service, then the filer should indicate the year and month it expects to begin operations. If operations began prior to January 1, 1999, the filer may so indicate by using the check box rather than entering the specific date.

C. BLOCKS 3 AND 4-A: FILER REVENUE INFORMATION

Blocks 3 and 4-A of the Telecommunications Reporting Worksheet report revenue information for calendar year 2022.

For most filers, completing Lines 303-314 and 403-418 is a three-step process.

⁴⁴ Both parties to a collect call are "consumers." 47 C.F.R. § 64.708; see 47 C.F.R. § 64.710(b)(1).

First, the filer must assign its gross billed revenues to reporting categories (generally, the rows on Form 499-A), which includes allocating revenues from bundled services between their telecommunications and non-telecommunications components. See Section IV.C.2.

Second, the filer must attribute telecommunications revenues derived from sales to contributing resellers (Block 3 on Form 499-A) or from sales to end users (Block 4 on Form 499-A). See Section IV.C.4.

Third, the filer must apportion its telecommunications revenues between the intrastate, interstate, and international jurisdictions (generally, the columns on the FCC Form 499-A). See Section IV.C.5.

1. FILER IDENTIFICATION

Line 301	499 Filer ID
Line 401	

Enter the Filer 499 ID from Line 101.

Line 302	Legal Name of Filer
Line 402	

Enter the legal name of the filer from Line 102.

2. GROSS BILLED REVENUES – GENERAL

Report gross billed revenues as directed:

- **Note on Gross Earned Revenues Reporting.** – Filers that maintain records in accordance with Generally Accepted Accounting Principles and that record revenues when earned instead of when billed, may use earned revenues to represent billed revenues as long as they do so consistently from reporting period to reporting period. These revenues should not include amounts that cannot be billed to customers. Filers using earned revenues to represent billed revenues need not impute earned revenue for redeemed credits if no earned revenue is recorded when credits are redeemed. To the extent that earned revenues are net of any uncollectible amounts, these uncollectible amounts must not be included on Line 421 or Line 422.

Gross billed revenues include:

- Revenues from all sources, including non-regulated telecommunications offerings, information services, and other non-telecommunications services.
- Total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments.
- Gross billed revenues include:
 - Account set-up
 - Connection
 - Service restoration
 - Termination
 - Revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services
 - Collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats
 - Surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract

- Any other non-recurring charges.

These charges should be reported on the same line that the filer reports any associated recurring revenue.

Gross billed revenues do NOT include:

- Deposits
- Amounts that cannot be billed to customers and may be distinct from booked revenues
- Taxes
- Surcharges that are not recorded on the company books as revenues and are remitted to government bodies
 - BUT any charge on a customer bill represented to recover or collect contributions to federal and state universal service support mechanisms must be shown separately on Line 403.

Special cases:

- National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool.
- Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.
- Credits should not be deducted from billed revenues when the credit is issued. Instead, filers should include redeemed credits with uncollectible amounts reported on Line 421 and Line 422.
- Mergers and acquisitions: When two filers merge, the successor company should submit the acquired entity's Form 499-A Worksheet and record all pre-acquisition revenue for that calendar year. The successor company should report total post-acquisition revenues for the reporting period on its own FCC Form 499-A. If the entities maintain separate corporate identities and both continue to operate, each filer should continue to report its revenue separately.
- International Services: For international services, gross billed revenues consist of gross revenues billed by U.S. telecommunications providers with no allowances for settlement or settlement-like payments. International settlement and settlement-like receipts for foreign-billed service should not be included in U.S. telecommunications revenues, but should be reported on Line 418.⁴⁵ Note that if the filer receives the foreign-bound traffic in the United States, then it is providing ordinary international service from the United States to a foreign point; receipts from the originating carrier should be reported as revenue on Line 414.
 - Revenue from circuits within the United States that connect a customer to an international circuit should be reported as interstate. Revenue from circuits that connect two foreign points should be reported on Line 418.

⁴⁵ For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then reoriginates and carries to a foreign point, the filer would not include those settlement-like payments as revenues on Line 414 of the FCC Form 499-A. Instead, those amounts would be reported on Line 418.

- Reporting of international revenues should be consistent with the definitions provided in Appendix C below.⁴⁶

3. APPORTIONING REVENUES AMONG REPORTING CATEGORIES

a. General Information

Good-faith estimates

If revenue category breakout cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet a good-faith estimate of the breakout.

- Good-faith estimates should be based on information that is current for the filing period.
- Filers should maintain documentation for good-faith estimates and entities may not simply report all revenues on one of the “other revenue” lines.

Column (a) required

Filers with any revenues for Lines 303–314 and 403–420 may not omit the dollar amounts from column (a), even if all of the revenues are for interstate or international services.

Block 3 vs. Block 4 revenues

Filers may report revenues from contributing resellers (i.e., universal service contributors) on Lines 303 through 314 and must report all other revenues on Lines 403 through 418. *See* Section IV.C.4 for additional information on reporting revenues from resellers.

- In many cases, the line-item categories are duplicated in Block 3 and Block 4.
- *Intercarrier compensation and universal service support*: The following categories of revenues are not end-user revenue and are reported in Block 3. For these revenue items, the filer is not required to retain Filer 499 ID information or verify that the customer is a reseller.

Category of Revenue	Report on
Per-minute switched access charges and reciprocal compensation	Line 304
Revenues received from carriers as payphone compensation for originating toll calls	Line 306
Charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6)	Line 307
Revenues that filers receive as universal service and other similar support from either states or the federal government	Line 308
Revenues received from another U.S. carrier for roaming service provided to customers of that carrier	Line 309

⁴⁶ The definitions in Appendix C were derived from the 2016 Filing Manual for Section 43.62 Annual Reports, consistent with past FCC Form 499 filing requirements.

- *Carriers required to use the USOA:* Carriers that are required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their responses on their USOA account data and supplemental records, dividing revenues into those received from universal service contributors and those received from end users and other non-contributors.⁴⁷
- *Certain international switched service revenues:* An underlying carrier also may include as carrier's carrier revenues any international switched service revenues received from another U.S. reselling carrier where that reselling carrier is using the underlying carrier's service to reoriginate the foreign-billed traffic of a foreign telephone operator. In this case, the reselling carrier must certify to the underlying carrier that it is using the resold international switched service to handle traffic that both originates and terminates in foreign points.

All filers should report revenues based on the following descriptions:

b. Fixed local service revenue categories

Fixed local services connect a specific point to one or more other points. These services can be provided using either wireline, fixed wireless, or interconnected VoIP technologies and can be used for local exchange service, private communications, or access to toll services.

Line 303 (Carrier's carrier)	Monthly service, local calling including message and local toll
Line 404 (End user)	charges, connection charges, vertical features, and other local exchange services

Lines 303 and 404 should include the basic local service revenues, except for:

- local private line revenues (reported on Lines 305 and 406);
- business data services revenues (reported on Lines 305 and 406);
- revenues from providing mobile or cellular services (reported on lines 309, 409, and 410);
- subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges (reported on line 405).

Lines 303 and 404 should include charges for:

- optional extended area service;
- dialing features;
- local directory assistance;
- added exchange services such as automatic number identification (ANI) or teleconferencing;
- LNP surcharges;
 - Revenues from federally tariffed LNP surcharges should be reported on Line 404, and should be identified as interstate revenues.
- connection charges;
- charges for connecting with mobile service; and

⁴⁷ See section IV C.4.

- local exchange revenue settlements.

Interconnected VoIP providers not reporting based on the safe harbor that bundle fixed local exchange service with interstate toll services at a unitary price must determine the appropriate portion of revenues to allocate to interstate and international toll service, in a manner that is consistent with their supporting books of account and records.

Filers should break out Line 303/404 revenues as follows:

Carrier's Carrier Revenue

Line 303.1	Revenues for services provided to carriers as unbundled network elements (UNEs).
Line 303.2	Revenues for services provided to carriers under tariffs or arrangements other than unbundled network elements (for example, resale). Line 303.2 should also include Presubscribed Interexchange Carrier Charge (PICC) charges levied on carriers.

End-User Revenue

Line 404.1	Local service portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee.
Line 404.2	Toll portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee. (Note: if the revenue from the toll portion of such service is attributed to an affiliate, that affiliate must report such revenues on Line 404.2, not on Line 414).
Line 404.3	Revenues from local exchange services plans (other than interconnected VoIP plans) that do not include interstate calling.
Line 404.4	Revenues from local service provided via interconnected VoIP service offered in conjunction with a broadband connection.
Line 404.5	Revenues from local service provided via interconnected VoIP service offered independent of the broadband connection. ⁴⁸

Line 404 should not include subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Incumbent LEC filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d)

⁴⁸ Bundled offerings include those offered directly by the filer and those offered by the filer through an affiliate.

of the appropriate line 404.1–404.5.⁴⁸ Line 404.1–404.5 should, however, include revenues from federally tariffed LNP surcharges, which should be identified as interstate revenues.

Line 304	Per-minute charges for originating or terminating calls

This line includes:

- Per-minute charges for originating or terminating calls, including charges related to originating or terminating VoIP-PSTN traffic.⁵⁰
- Revenues to the local exchange carrier for messages between a cellular customer and another station within the mobile service area.
- Any other gross charges to other carriers for the origination or termination of toll or non-toll traffic.
- Direct trunk transport, port charges, mileage charges and rearrangement charges that are normally treated as access charge revenues.⁵¹

Do not deduct or net payments to carriers for origination or termination of traffic on their networks.

This line does not include:

- International settlement or settlement-like receipts or transmitting fees from international toll services.

Filers should break out Line 304 revenues as follows:

Line 304.1	Revenues for originating and terminating minutes provided <u>under state or federal access tariffs</u> .
Line 304.2	Revenues for originating and terminating minutes provided <u>as unbundled network elements or other contract arrangements</u> .

Line 405	Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer

⁴⁸ See *Universal Service Contribution Methodology: Request for Review of Decision of the Universal Service Administrator by Mark Twain Telephone Company*, WC Docket Nos. 10-90, 06-122, Order, 37 FCC Red 8313, 8321, para. 18 & n.62 (WCB 2022).

⁴⁹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, 18005-08, paras. 940-42 (2011) (*USF/ICC Transformation Order*), at ¶¶, sub num. In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) (setting forth default intercarrier compensation rates for VoIP-PSTN traffic); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, 27 FCC Red 4648, 4659-4663, paras. 30-35 (2012) (the Commission allowed local exchange carriers (LECs) to tariff default rates equal to their intrastate originating access rates for originating intrastate toll VoIP traffic until June 30, 2014, after which time LECs are to tariff default rates for such traffic equal to their interstate originating access rates).

⁵¹ 47 CFR Part 69.

Line 405 should include charges to end users specified in access tariffs, such as tariffed subscriber line charges (SLCs), Access Recovery Charges (ARCs),¹² and Primary Interexchange Carrier Charges (PICCs) levied by a local exchange carrier on customers that are not presubscribed to an interexchange carrier (i.e., a no-PIC customer). Note that federal SLCs are separate from toll revenues.

Line 405 should not include charges to end users for business data services (which are reported on Line 406).

The Commission does not regulate how non-incumbent LECs recover the costs of the local loop, nor does it require non-incumbents to assess a non-traffic sensitive charge for the costs of providing interstate or interstate access service from their customers through a separately stated end user charge. To the extent non-incumbent contributors choose to assess a separately stated charge for the interstate portion of fixed local exchange service or interstate exchange access, they should report such revenues on Line 405 and allocate those revenues to the interstate jurisdiction, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of account and records.¹³

Telecommunications providers that do not have SLC, ARC or PCCC tariffs on file with the Commission or with a state utility commission, that are not reselling such tariffed charges, or that do not have separately stated charges for the interstate portion of fixed local exchange service or interstate exchange access should report \$0 on Line 405.

Line 305 (Carrier's Carrier) – Local Private Line and Business Data Service Line 406 (End User)

Line 406 should include:

- Revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths, including those services that provide dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.
- Revenues from special access lines resold to end users unless the service is bundled with and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line.
- Revenues from offering dedicated capacity between specified points even if the service is provided over local area switched, multi-protocol label switching (MPLS), asynchronous transfer mode (ATM), or frame relay networks.
- Revenue from broadband transmission service, including consumer broadband-only loop service, voluntarily provided on a common carrier basis to providers of retail broadband Internet access except as set forth below. This provision does not include revenue from broadband transmission

¹² The Commission allowed incumbent LECs to assess an ARC on certain wireline telephone customers, a rule adopted as part of comprehensive intercarrier compensation reform. See *USF/ICC Transformation Order*, 26 FCC Red at 17956-17961, 17987-17994, paras. 847-853, 905-916. The ARC is tariffed separately from the SLC; however, the Commission permitted carriers to combine the ARC and SLC as a single line item on a customer bill. *Id.* 26 FCC Red at 17958, para. 852. For purposes of reporting revenues on Line 405, incumbent LECs should include all revenues collected from ARCs.

¹³ For example, to the extent that a contributor's tariff filing (or equivalent) indicates that a non-traffic sensitive charge is for interstate access, then revenues for such charge (or a portion thereof) must be allocated to interstate revenues for USF reporting purposes.

service offered on a common-carrier basis by rate-of-return carriers that are exempt from the contribution obligations on those services pursuant to Commission order.⁵⁴

- o Filers should report on Line 406 revenues derived from the sale of special access service on a common carrier basis to providers of retail broadband Internet access service.⁵⁵
- o All other revenues from local private line service and business data service billed to end users must be reported on Line 406.
- o Mixed-use private or WATS lines: If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate and must be reported.⁵⁶

Line #18 should include:

- Revenues from the provision of broadband transmission service offered on a non-common-carrier basis to providers of broadband Internet access or
- Revenues from the provision of broadband transmission service offered on a common-carrier basis by rate-of-return carriers that are exempt from contribution obligations on those services pursuant to Commission order.⁵⁷

Amounts reported on Line 305 should be divided between:

Line 305.1	Revenues for service provided to contributing resellers for resale as telecommunications.
Line 305.2	Revenues for service provided to contributing resellers for resale as interconnected VoIP. Revenue should not include interconnected VoIP service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer; however, it should include private line/business data service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer.

Line 306 (Carrier's Carrier) – Payphone Revenues Line 407 (End User)

Line 306 should include revenues received from carriers as payphone compensation for originating toll calls.

⁵⁴ See *Petition of NTC – The Rural Broadband Association and the United States Telecom Association for Forbearance Pursuant to 47 U.S.C. § 160(c) from the Application of Contribution Obligations on Broadband Internet Access Transmission Services*, WC Docket No. 17-206, Order, 33 FCC Red 5712 (2018) (*Rate-of-Return Forbearance Order*).

⁵⁵ See *Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Red 13780, 13797, para. 39 n.109 (2012) (*2012 Wholesale-Retailer Clarification Order*); *Wireline Broadband Internet Access Services Order*, 20 FCC Red at 14915-16, paras. 112-113 & n.357; *2006 Contribution Methodology Reform Order*, 21 FCC Red at 7549, para. 62 n.206.

⁵⁶ See *Universal Service Order*, 12 FCC Red at 9173, para. 778 (citing 47 CFR § 36.154(a)).

⁵⁷ *Rate-of-Return Forbearance Order*.

Line 407 should include revenues received from customers paid directly to the payphone service provider, including all com-in-the-box revenues. Do not deduct commission payments to premises' owners.

Line 307 (Carrier's Carrier) Other Local Telecommunications Service Revenues
Line 408 (End User)

Include local telecommunications service revenues that reasonably would not be included with one of the other fixed local service revenue categories. Report any revenues from offering switched capacity on local area data networks such as ATM or frame relay networks.

Line 307 should include charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6).

Line 308 Universal Service and Similar Support Amounts Received from Federal or State Government Sources

- Universal service support revenues may include:
 - Any amounts that filers receive as universal service support from either states or the federal government.
 - ◊ Filers may include the following as revenues on Line 308:
 - Lifeline and Link Up reimbursement from the Fund;
 - High Cost universal service support from the Fund;
 - Subsidy amounts for discounted services provided to schools, libraries, and rural healthcare providers. This includes (1) revenue received directly from the Fund and (2) revenue received from a school, library, or rural healthcare provider to the extent such revenue is attributable to universal service subsidy amounts paid to the school, library, or rural healthcare provider.
 - ◊ Include amounts received as cash as well as amounts received as credit against contribution obligations.
 - ◊ Amounts received from the **federal** USF support mechanism should be attributed as either interstate or international revenues, as appropriate.
 - Any non-universal service support amounts that filers receive as support from either the states or federal government.
 - ◊ Filers may include as revenues on Line 308:
 - Subsidy amounts from the Emergency Connectivity Fund, Emergency Broadband Benefit Program, and the COVID-19 Telehealth Program.

Do not include:

- Any amounts charged to customers to recover universal service or similar contributions.
- Any amounts schools, libraries, and rural health-care providers pay for the non-discounted portion of services. Such charges are properly reported as end user revenue.
- Any amounts end users pay for non-discounted portion of services. Such charges are properly reported as end user revenue.

c. Mobile service categories

Mobile services are wireless communications between mobile wireless equipment, such as cellular phones and other points.

Line 309 (Carrier's Carrier) Mobile Services Line 409 and 410 (End User)

Data reported on these lines should contain mobile service revenues, except:

- Toll charges to mobile service customers
 - Itemized toll charges to mobile service customers should be included in Lines 413 or 414, as appropriate.
- Charges associated with customer premises equipment
 - Itemized charges for customer premises equipment should be included in Line 418.3
- Roaming charges for service provided by foreign carriers operating in foreign points. These charges are not U.S. telecommunications revenues and therefore should be reported on Line 418.

Filers should break out Line 309/409/410 revenues as follows:

Line 309	Revenues for all mobile service provided to contributing resellers, including revenues received from another U.S. carrier for roaming service, whether or not it includes toll charges, provided to customers of that carrier.
Line 409	Revenues for mobile service provided to end users, including monthly charges, activation fees, service restoration, and service order processing charges, etc. End-user prepaid wireless service revenues attributable to activation and daily or monthly access charges should be reported on Line 409.
Line 410	Revenues for mobile service provided to end users, including any roaming charges assessed on customers for calls placed out of customers' home areas and local directory assistance charges. Revenues received from a foreign carrier for roaming services provided in the U.S. to customers of that carrier. End-user prepaid wireless service revenues attributable to airtime should be reported on Line 410.

d. Toll service revenue categories

Toll services are telecommunications services, wireline, wireless or interconnected VoIP services, that enable customers to communicate outside of local exchange calling areas. Toll service revenues include intrastate, interstate, and international long-distance services.

For wireless providers, toll services are telecommunications services that enable customers to communicate outside the customer's plan-defined home calling area.⁵⁸ The term "home calling area" is used generally by wireless carriers to denote the plan-defined area in which a subscriber may make calls and incur no additional charges beyond the plan-specific per month charge, assuming the subscriber does not exceed the plan allotted minutes.⁵⁹

Line 411 Prepaid Calling Cards

Include:

- Revenues from prepaid calling cards provided either to customers, distributors, or to retail establishments.
- Prepaid service where the customer utilizes the service provider's switching platform and a personal identification number (PIN) for purposes of verification and billing, even if the customer does not receive a physical card.⁶⁰

Gross billed revenues should represent the amounts actually paid by end user customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end-user revenues. For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards.

**Line 310 (Carrier's carrier) Operator and toll calls with alternative billing arrangements
Line 413 (End User)**

Operator and toll calls with alternative billing arrangements should include:

- All calling card or credit card calls, person-to-person calls, and calls with alternative billing arrangements such as third-number billing, collect calls, and country-direct type calls that either originate or terminate in a U.S. point.
- All charges from toll or long-distance directory assistance.
- Revenues from all calls placed from all coin and coinless, public and semi-public, accommodation and prison telephones, except that:

⁵⁸ See *Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1414, para. 5 (2008) (*Separately Stated Toll Order*).

⁵⁹ *Id.* at 1415, para. 7, n.28.

⁶⁰ See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827–4827, para. 3 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); see also *Universal Service Contribution Methodology: Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14538–39, paras. 12–13 (WCB 2010) (*Network IP Order*); *petition for partial reconsideration denied, Request for Review of a Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order on Reconsideration, 26 FCC Rcd 6169 (WCB 2011).

- Calls that are paid for via prepaid calling cards should be included on Line 411.
- Calls paid for by coins deposited in the phone should be included on Line 407.

Line 412	International Calls that Originate and Terminate in Foreign Points

International calls that traverse the United States but both originate and terminate in foreign points ("traditional transiting traffic" revenues) are excluded from the universal service contribution base.

- Carrier's carrier (reseller) transit revenues should be reported on Line 311.
- End-user transit revenues should be segregated from other toll revenues by showing them on Line 412.

Telecommunications providers should only include traditional transiting revenues and should not report international settlement revenues from traditional settlement transiting traffic on the Worksheet.

Line 311 (Carrier's carrier)	Ordinary Long Distance
Line 414 (End User)	

Filers should report ordinary long distance revenues on these lines, including:

- Revenues from most toll calls placed for a fee
- Flat monthly charges billed to customers, such as account maintenance charges, PICC pass-through charges, and monthly minimums
- Ordinary message telephone service (MTS), WATS, subscriber toll-free, 900, "WATS-like," and similar switched services
- Separately stated toll revenue from wireline, wireless, and interconnected VoIP services.⁶¹

Do not include:

- Revenues for the toll portion of flat rated local service (other than interconnected VoIP service), regardless of whether this portion of revenue is reported by a local exchange carrier or by its toll affiliate. Report such revenues on Line 404.2.
- Revenue for the toll portion of flat rated interconnected VoIP local service. Report such revenues on Line 404.4 or Line 404.5, as appropriate.

Ordinary long distance revenues should be reported as follows:

Line 311	Ordinary long distance and long distance using interconnected VoIP provided to contributing resellers.
Line 414.1	Ordinary long distance provided to end users using technologies other than interconnected VoIP, including toll service that employs Internet Protocol but that is not provided on an interconnected VoIP basis. ⁶²
Line 414.2	Separately billed revenue for ordinary long distance provided to end users using interconnected VoIP.

Line 312 (Carrier's Carrier)	Long Distance Private Line Services

⁶¹ See 2006 Contribution Methodology Reform Order, 21 FCC Red at 7534, para. 29.

⁶² See *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Red 7457 (2004) (*AT&T IP in the Middle Order*).

Line 415 (End User)

Long distance private line service should include:

- Revenues from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area.
- Frame relay and similar services where the customer is provided a dedicated amount of capacity between points in different basic service areas.
- Revenues from the resale of business data services if they are included as part of a toll private line service.

For international private line services, U.S. providers must report on Line 415 or Line 312, as appropriate, revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the reporting carrier or by a partner carrier in a foreign point.

Line 313 (Carrier's carrier) Satellite Services
Line 416 (End User)

Include:

- Revenues from providing space segment service and earth station link-up capacity used for providing telecommunications or telecommunications services via satellite.

Do not include:

- Revenues derived from the lease of bare transponder capacity.

Line 314 (Carrier's carrier) All Other Long-Distance Services
Line 417 (End User)

Include:

- All other revenues from providing long distance communications services.
- Toll teleconferencing.⁴³
- Switched data, frame relay and similar services where the customer is provided a toll network service rather than dedicated capacity between two points.

⁴³ Audio bridging service providers should report all audio bridging revenues as telecommunications revenues. See *Interim Order*, 23 FCC Rcd at 10734, 10739, paras. 8, 25 - 26.

c. Other revenue categories

Line 403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions

Itemized charges levied by the filer in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line 403.

- Any charge identified on a bill as recovering contributions to federal universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues, as appropriate. Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but may not be reported as intrastate revenues.
- Any charge identified on a bill as recovering contributions to state universal service support mechanisms must be shown on Line 403 and included in column (a) in the total.
- Filers should report intrastate revenues on line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills.

Line 418	Other revenues that should not be reported in the contribution bases
	Non-interconnected VoIP revenues (TRS only)

Line 418 should include all non-telecommunications service revenues on the filer's books, including non-telecommunications service revenues received from contributing resellers, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases. Line 418.4 should include non-interconnected VoIP revenues, which are included in the TRS contribution base only.

Line 418 includes revenues from:

- Information services.
 - Information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. For example, wireless text messaging services including Short Message Service (SMS) and Multimedia Messaging Service (MMS), voice mail, call moderation, and call transcription services are information services. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.
- The provision of broadband transmission offered on a non-common-carrier basis to providers of broadband Internet access.
- The provision of broadband transmission service offered on a common-carrier basis by rate-of-return carriers that are exempt from contribution obligations on those services pursuant to Commission order.
- The provision of broadband Internet access.
- Published directory services.
- Billing and collection services.
- Inside wiring.
- Inside wiring maintenance insurance.

- Pole attachments
- Open video systems (OVS)
- Cable leased access
- Cable service
- Direct broadcast satellite (DBS) service
- The sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE)
- The sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE.
- Late payment charges
- Charges imposed by the filer for customer checks returned for non-payment
- Revenues from telecommunications provided in a foreign country where the traffic does not transit the United States or where the provider is offering service as a foreign carrier, i.e., a carrier licensed in that country.

Revenue reported on Line 418 should be divided into four categories:

Line 418.1	Revenues from other non-telecommunications goods or services that are bundled with U.S. wireline or wireless circuit switched exchange access services.
Line 418.2	Revenues from other non-telecommunications goods or services that are bundled with U.S. interconnected VoIP service.
Line 418.3	All other revenues properly reported on line 418 except those reported in Lines 418.1, 418.2, and 418.4, including broadband Internet access service subject to forbearance and broadband transmission service provided on a non-common carrier basis to a broadband Internet access provider.
Line 418.4	Revenues from non-interconnected VoIP services sold to end users that are not otherwise includable on Lines 403 to 417. Non-interconnected VoIP service is defined in Appendix B, under non-interconnected VoIP service provider. ⁶⁴

⁶⁴ For TRS purposes, “providers of non-interconnected VoIP services that are offered with other (non-VoIP) services that generate end-user revenues [are required] to allocate a portion of those end-user revenues to the non-interconnected VoIP service in two circumstances: (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price.” *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-39, para. 15. For example, a video gaming service may integrate chat functions that utilize non-interconnected VoIP services, but use of such functions may not be readily identifiable or separable from the gaming service components. *Id.* at 14538-41, paras. 15-17.

f. Reporting revenues from bundled offerings

Allocation of revenues between either wireline or interconnected VoIP telecommunications and bundled non-telecommunications, such as information services and consumer premises equipment (CPE), are governed by the Commission's bundling rules.

The Commission adopted two safe harbor methods for allocating revenue when telecommunications services and CPE/enhanced services are offered as a bundled package.

- The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services.
- Alternatively, filers may elect to treat all bundled revenues as telecommunications service revenues for purposes of determining their universal service obligations.

Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation method may not be considered reasonable and will be evaluated on a case-by-case basis in an audit or enforcement context.

Prepaid calling card providers may avail themselves of the bundled service safe harbors for separating revenue between telecommunications and information services.⁶⁵

Similarly, providers of non-interconnected VoIP services that are offered with end-user revenue generating (non-VoIP) services may avail themselves of the bundled service safe harbors for allocating revenue.⁶⁶

g. Notes for carriers that use the USOA

The revenue accounts in the USOA generally correspond to specific revenue lines in Block 3 and Block 4.

- For example, revenue amounts recorded in accounts 5001, 5002, 5050, 5060 and 5069 should be reported on Line 303 or Line 404, as appropriate.
- Similarly, revenues recorded in account 5280 should be reported on Line 407.

There are some exceptions.

- For example, local exchange carrier revenues from mobile carriers for calls between wireless and wireline customers should be reported on Line 304.
- Monthly and connection revenues from mobile services provided to end users in account 5004 should be reported on Line 409.
- Per-minute revenues from end users in account 5004 should be reported on Line 410. However, revenues in account 5004 from exchanging traffic with mobile service carriers should be reported on Line 304.

⁶⁵ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-54 (2001); *see Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling, Report and Order, 21 FCC Rcd 7290, 7298, para. 22 (2006) (*Prepaid Calling Card Services Order*), *vacated in part, Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

⁶⁶ *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-41, paras. 15-17.

- Similarly, state per-minute access revenues recorded in account 5084 should be reported on Line 304; state special access revenues recorded in account 5084 should be reported on Line 305 and Line 406, as appropriate; and state subscriber line charge revenues recorded in account 5084 should be reported on Line 405.
- Uncollectible revenue recorded in account 5300 should be reported on Line 421. The portion of these revenues that correspond to contribution base revenues should be reported on Line 422.

Revenues classified in account 5200, miscellaneous revenues, should be divided into several lines for reporting purposes.

- For example, account 5200 includes revenues derived from unbundled network elements, which should be reported on Line 303 and, reciprocal compensation, which should be reported on Line 304.
- Some types of incidental regulated revenues contained in account 5200, miscellaneous revenues, will continue to be reported on Lines 403 through 408. These include collection overages and non-refundable prepaid amounts that are not used by the customer.
- Note that late payment charges, bad check penalties imposed by the company, enhanced services, billing and collection, customer premises equipment sale, lease or insurance, and published directory revenues should continue to be reported on Line 418.

Revenues recorded in account 5100, long distance network service revenues, should be reported on Line 310 through Line 314 and Line 411 through Line 417, as appropriate.

Revenues from account 5100, long distance message revenues, are normally revenues from ordinary long distance and other switched toll services and should be reported on Lines 311, 414.1, and 414.2 except for amounts properly reported on Lines 310, 407, 411, 412, and 413.

4. ATTRIBUTING REVENUES FROM CONTRIBUTING RESELLERS AND FROM END USERS

Filers must report revenues using two broad categories: (1) revenues reported in Block 3 (revenues from contributing resellers, intercarrier compensation, and universal service support) and (2) revenues reported in Block 4 (revenues from all other sources). Taken together, these revenues should include all revenues billed to customers and should include all revenues on the filers' books of account.

Except as noted below, most categories of revenues require the filer to determine whether the customer purchasing the telecommunications is a contributing reseller or instead an end user.⁶⁷ Revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see below*) are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

⁶⁷ See 2012 *Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13786-87, para. 12; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*; *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) ("For this purpose, a reseller is a telecommunications service provider that 1) incorporates purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings"); *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10825-26, para. 5 (WCB 2009) (*Global Crossing Order*).

a. Definition of “Reseller”

For purposes of completing Block 3, a “reseller” is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications into its own offerings; *and* (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from those offerings.⁶⁸ Specifically, a customer is a reseller if it incorporates purchased wholesale service into an offering that is, at least in part, assessable telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.⁶⁹

b. Revenues from Entities Exempt from USF Contributions

For the purposes of filling out this Worksheet—and for calculating contributions to the universal service support mechanisms—certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms.

- These exempt entities, including “international only” and “intrastate only” providers and providers that meet the *de minimis* universal service threshold, should not be treated as contributing resellers for the purpose of reporting revenues in Block 3.
- That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403–417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate.
 - Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.
 - In Block 5, Line 511, however, filers may elect to report the amounts of such revenues (i.e., those revenues from exempt entities that are reported as end-user revenues) so that these revenues may be excluded for purposes of calculating contributions to TRS, LNPA, and NANPA.

c. “Reasonable Expectation” Standard

Pursuant to the *2012 Wholesaler-Reseller Clarification Order*, a filer may demonstrate that it has a “reasonable expectation” that a customer contributes to federal universal service support mechanisms based on revenues from the customer’s offerings by following the guidance in these instructions or by submitting other reliable proof.⁷⁰

Filers that comply with the procedures specified in this section of the instructions will be afforded a “safe harbor”—i.e., that filer will be deemed to have demonstrated a reasonable expectation. If a wholesale provider follows procedures that deviate in any way from the guidance in this section, the wholesale provider will have to demonstrate a reasonable expectation via “other reliable proof.”⁷¹ USAC shall

⁶⁸ *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13781-82, para.3.

⁶⁹ Thus, for example, if a customer purchases a DSL line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

⁷⁰ *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13794, para. 32, and 13801-02, paras. 51-52; *see Global Crossing Order*, 24 FCC Rcd at 1028-29, para. 14.

⁷¹ *See id.* at 13801-02, paras. 51-52.

evaluate the use of “other reliable proof” to demonstrate a “reasonable expectation” on a case-by-case basis, based on the reasonableness of the utilized method or proof.⁷²

Filers that do not comply with the safe harbor procedures or that do not otherwise meet the reasonable expectation standard will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end user revenues.⁷³

d. Safe Harbor Procedures for Meeting the “Reasonable Expectation.”

Each filer should have documented procedures to ensure that it reports as “revenues from resellers” only revenues from entities that meet the definition of reseller. The procedures must include, at a minimum, the following information on resellers:

1. Filer 499 ID;⁷⁴
2. Legal name;
3. Legal address;
4. Name of a contact person;
5. Phone number of the contact person; and,
6. As described below, an annual certification by the reseller regarding its reseller status;

Filers shall provide this information to the Commission or the Administrator upon request.

e. Certifications

Annual Certificates. A filer may demonstrate that it had and has a reasonable expectation that a particular customer is a reseller with respect to purchased service(s) by providing a certificate signed each calendar year by the customer that:⁷⁵

- (1) specifies which services the customer is or is not purchasing for resale pursuant to the certificate;⁷⁶ and

⁷² This requirement is further discussed in the *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13801-2, para. 52.

⁷³ If a wholesale provider’s customer (or another entity in the downstream chain of resellers) actually contributed to the federal universal service support mechanisms for the relevant calendar year on offerings that incorporate purchased wholesale services, the wholesale provider will not be obligated to contribute on revenues for the wholesale services, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed its FCC Form 499-A for the relevant calendar year. *Id.* at 13799, paras. 43-44.

⁷⁴ Filer ID must be associated with an **active** 499 Filer to meet the “reasonable expectation” standard.

⁷⁵ Reseller certifications must be signed by the “customer” (*i.e.*, the resale provider itself rather than a third-party representative or consultant). *See, e.g., 2012 Wholesaler-Reseller Clarification Order.*

⁷⁶ At the filer’s discretion, the filer may, for example, rely on certificates that specify any of the following: (1) that all services purchased by the customer are or will be purchased for resale pursuant to the certificate (“entity-level certification”); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are or will be purchased for resale pursuant to the certificate (“account-level certification”); (3) that individual services specified by the customer are or will be purchased for resale pursuant to certification (“service-specific certification”); or (4) that all services except those specified either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are or will be purchased for resale pursuant to the certificate. A customer may certify that additional services will be purchased

(continued . . .)

(2) is consistent with the following sample language:

*I certify under penalty of perjury that the company is purchasing service(s) for resale, at least in part, and that the company is incorporating the purchased services into its own offerings which are, at least in part, assessable U.S. telecommunications or interconnected Voice over Internet Protocol services. I also certify under penalty of perjury that the company either directly contributes or has a reasonable expectation that another entity in the downstream chain of resellers directly contributes to the federal universal service support mechanisms on the assessable portion of revenues from offerings that incorporate the purchased services.*⁷⁷

Services Purchased After Date of Annual Certificate. A filer may sell additional service(s) to a customer after the date that the annual certificate is signed. If the annual certificate does not cover those additional services, the filer may demonstrate a reasonable expectation that a customer is a reseller with respect to a service purchased after the date of the annual certificate signed by the customer by relying on either of these received prior to the filing of the applicable FCC Form 499-A:

- (1) a verifiable notification from the customer that the customer is purchasing the service for resale consistent with the valid, previously signed annual certificate, or
- (2) a subsequent certificate covering the purchased service signed by the customer.

5. ALLOCATING REVENUES BETWEEN THE JURISDICTIONS

Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417.

a. Definitions

Intrastate telecommunications means: communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia.

Interstate and international telecommunications means: communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.

b. General Requirements

Where possible, filers should report their amount of total revenues that are intrastate, interstate, and international by using information from their books of account and other internal data reporting systems.

- Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (d) and (e), respectively.
 - Total revenues entered in column (a) include revenues billed for intrastate service even though intrastate revenues are not reported separately on the FCC Form 499-A.

for resale pursuant to the certificate if the customer (or another entity in the downstream chain of resellers) will contribute to the federal universal service support mechanisms on revenues attributed to such services for the relevant calendar year.

⁷⁷ In some instances, reselling carriers are themselves selling the underlying service to another (non-contributing) reseller, which then sells the same service to another (non-contributing) reseller, and so on until the service is ultimately sold to an entity that is a contributing “reseller.” In these instances, an underlying carrier also may include as carrier’s carrier revenue any revenues received from service ultimately provided to entities that meet the definition of “reseller” for purposes of the FCC Form 499-A.

- If the allocation of revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures.
 - In such cases, the filer should determine the good-faith estimates of the interstate and the international revenues. Enter the interstate amount in column (d) and the international amount in column (e). Enter zero dollars in columns (d) and (e) if and only if there were no interstate or international revenues for the line for the reporting period.
 - A reporting entity may not submit a good-faith estimate lower than one percent unless the correct figure should be \$0.
 - Good-faith estimates must be based on information that is current for the filing period.
 - Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the per-minute revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account.

c. Services Offered Under Interstate Tariffs

Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed LNP surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

d. Flat-rate Unbundled Network Access Elements

In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

e. Mixed-Use Private or WATS Lines

If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.⁷⁸

f. Bundled Local and Toll Services

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service (*i.e.*, voice long distance) for a single price.

- Revenues for the whole bundle, except for tariffed subscriber line, ARC and PICC charges, should be reported on Line 404, as described more fully above.
- The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively.⁷⁹
- Filers should make a good-faith estimate of the amounts of intrastate, interstate, and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

⁷⁸ See *Universal Service Order*, 12 FCC Rcd at 9173, para. 778 (citing 47 CFR § 36.154(a)).

⁷⁹ See *Separately Stated Toll Order*, 23 FCC Rcd at 1414, para. 5 (defining “toll service”).

g. Safe Harbors

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers that choose to avail themselves of safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages.

Wireless Safe Harbor: The FCC provides the following safe harbor percentages of interstate revenues associated with Line 309, Line 409, and Line 410:⁸⁰

- 37.1% of cellular and broadband PCS telecommunications revenues
- 12.0% of paging revenues
- 1.0% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll-service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

Interconnected and Non-Interconnected VoIP Safe Harbor: The FCC provides the following safe harbor percentage of interstate revenues associated with Line 303.2, Line 311, Line 404.4, Line 404.5, Line 414.2, and Line 418.4:

- 64.9% of interconnected VoIP and non-interconnected VoIP telecommunications revenues⁸¹

This safe harbor percentage may not be applied to universal service pass-through charges or other fixed local service revenues.

Single Election for Affiliated Entities: All affiliated wireless telecommunications providers and VoIP providers (including interconnected and non-interconnected) must make a single election, each quarter, whether to use a traffic study or to use the current safe harbor within the same safe harbor category.⁸²

- So, for example, if in a calendar quarter a wireless telecommunications provider uses a traffic study to report interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also use traffic studies to report interstate telecommunications revenues for cellular and broadband PCS offerings.

⁸⁰ See *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7532–33, 7545–46, paras. 25–27, 53–55; *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*2002 Second Contribution Methodology Order and FNPRM*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258–60, paras. 11-15 (1998).

⁸¹ *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7545, para. 53; *2011 TRS Contributions Order*, 26 FCC Rcd at 14544, para. 25.

⁸² See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order and Order on Reconsideration, 18 FCC Rcd 1421, 1424-25, para. 6 (2003) (“wireless telecommunications providers are ‘affiliated’ for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an ‘identity of interest’ with another contributor”). See also 47 CFR § 1.2110(c)(5).

- The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

Same Methodology for the FCC Form 499-A and the FCC Form 499-Q: Filers should use the same methodology (traffic study or safe harbor) to report interstate and international jurisdictions on the FCC Form 499-A as used on the FCC Form 499-Qs to forecast revenue in each quarter of the applicable calendar year.

- For example, if a filer projected revenue based on a safe harbor for the first two quarters and based on traffic studies for the final two quarters, the amounts reported in the FCC Form 499-A for the first two quarters would be based on actual billings for those quarters and the relevant safe harbors, and the amounts reported for the final two quarters would be based on actual billings for those quarters and the traffic studies for those quarters.

Filers Not Required to File an FCC Form 499-Q: For filers who were not required to file the FCC Form 499-Q, the interstate and international jurisdictions reported on the FCC Form 499-A must be based on information that is current for the filing period.

h. Traffic Studies

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.⁸³

- In developing their traffic studies, such providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international.
- Any revenues associated with charges on customer bills that are identified as interstate or international must effectively be accounted for (e.g., through proper weighting in a traffic study) as 100 percent interstate or international when reporting revenues.⁸⁴
- Sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample.
- Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above.
- Mobile telecommunications providers, interconnected VoIP providers and non-interconnected VoIP providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request.
- In addition, filers that rely on traffic studies must submit those studies to USAC at the time of the FCC Form 499-A filing. (See Table 3 for filing instructions – including address for filing traffic studies and filing deadlines). To enable USAC to match traffic studies filed by contributors with

⁸³ See *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534–36, 7547, paras. 29–33, 57; *2011 TRS Contributions Order*, 26 FCC Rcd at 14544, para. 25.

⁸⁴ See *Separately Stated Toll Order*, 23 FCC Rcd at 1418, para. 15. In developing traffic studies, toll service traffic must be identified and treated in a manner that recognizes that such traffic is more likely to be interstate or international than intrastate. See *id.* Additionally, appropriate weighting of the higher revenue that is often associated with toll service must be reflected in the traffic study or studies. See *id.*

their FCC Form 499 filings, include the following identifying information at the top of each page of the traffic study: Filer ID, Company Name, Affiliated Filers Name (where applicable).

D. BLOCK 4-B: TOTAL REVENUE AND UNCOLLECTIBLE REVENUE INFORMATION

The Administrator relies on the detail line information on the Worksheet to arrive at the totals shown in Block 4-B. The Administrator will attempt to resolve conflicts between any sums that differ from the information entered into the totals on Block 4-B.

Line 419	Gross Billed Revenues from All Sources

Gross billed revenues from all sources should equal the sum of revenues by type of service reported on Lines 303 through 314 and Lines 403 through 418.

Line 420	Gross Universal Service Contribution Base Amounts

Universal service contribution base revenues should equal the subtotal of Lines 403 through 411 and Lines 413 through 417 for each column. The totals on this line represent gross end-user revenues for the purpose of determining contributions to universal service support mechanisms. See section IV E (Line 511 instructions).

Line 421	Uncollectible revenue/ bad debt associated with Line 419 (Gross Billed Revenues)

Show the uncollectible revenue/bad debt expense associated with gross billed revenues amounts reported on Line 419.

- For those using billed revenues, this line may include redeemed credits.
- Reported uncollectible amounts should:
 - Be the amount reported as bad debt expense in the filer's income statement for the year.
 - Cover uncollectibles associated with all revenue on the filer's books (Line 419), including uncollectible carrier's carrier revenues, end-user telecommunications revenues, and revenues reported on Line 418.
 - Represent the portion of gross billed revenues that the filer reasonably expects will not be collected.
- Uncollectibles may not include any amounts associated with unbilled revenues.⁸³
- Filers that operate on a cash basis should report \$0 on this line.
- Filers that used earned revenue to represent billed revenues should not report as uncollectible any billings that are not included in earned revenues.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 422	Uncollectible revenue/ bad debt associated with Line 420 (Universal Service Contribution Base Amounts)

⁸³ See 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24970-95.

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the universal service contribution base amounts reported on Line 420.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422.
- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.
- Filers must be able to document how the amounts reported on Line 422 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

In exceptional circumstances, amounts reported on Line 422 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 423	Net universal service contribution base revenues

Net universal service contribution base revenues should equal the amounts reported on Line 420 minus the amounts reported on Line 422.

E. BLOCK 5: ADDITIONAL REVENUE BREAKOUTS FOR NON-USE MECHANISMS

Line 501	Filer 499 ID

Enter the Filer 499 ID from Line 101.

Line 502	Legal Name of Filer

Enter the legal name of the filer from Line 102.

Line 503-510	Percentages of Telecommunications Revenues by LNP Region

In these lines, filers should identify the percentages of their telecommunications revenues by LNP region.

- Payphone service providers, private service providers, and shared-tenant service providers that have certified that they are exempt from contributing to the shared costs of LNP need not provide these breakdowns.

Carriers and interconnected VoIP providers should calculate or estimate the percentage of revenues that they billed in each region based on the amount of service they actually provided in the parts of the United States listed for each region.

- Customer billing addresses may be used to calculate or estimate this percentage.
- The percentages in column (a), representing Block 3 revenues billed in each region of the country, should add to 100% unless the filer did not provide any services for resale by other contributors to the federal universal service support mechanisms.

- The percentages in column (b), representing Block 4 telecommunications service revenues billed in each region of the country (excluding non-telecommunications revenues reported on Line 418) should add to 100% unless the filer did not provide any telecommunications services to end users or non-contributing carriers.
- Filers may use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.

Line 511	Revenues from Resellers that Do Not Contribute to Universal Service Support Mechanisms and Are Included in Block 4

Identify revenues from resellers that do not contribute directly to universal service support mechanisms and that are included in Block 4. Revenues from resellers that do not contribute to universal service support mechanisms are included on Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues on Line 511.

Line 420 may contain revenues from some FCC Form 499 filers that are exempt from contributing directly to universal service support mechanisms. For example, these would include filers that meet the universal service *de minimis* exception or that provide "international only" service. Since these universal service exempt entities generally do contribute directly to the TRS, LNP, and NANPA mechanisms, revenues from these entities need not be included in the underlying service provider contribution bases for those mechanisms. Filers choosing to report revenues on Line 511 must have the FCC Filer 499 ID for each customer whose revenues are so reported.

Line 512	Gross TRS Contribution Base Amounts

TRS contribution base revenues reportable on Line 512(a) should equal the subtotal of Lines 403(a) through 417(a) and Line 418.4(a) less Line 511(a).

TRS contribution base revenues reportable on Line 512(b) should equal the subtotal of Lines 403(d) through 417(d), Lines 403(e) through 417(e), Line 418.4(d), and Line 418.4(e) less Line 511(b). The totals on this line represent gross end-user revenues for the purpose of determining contributions to TRS.

Line 513	Uncollectible Revenue/ Bad Debt Expense Associated with TRS Contribution Base Amounts

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the TRS contribution base amounts reported on Line 512.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 513.
- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Filers must be able to document how the amounts reported on Line 513 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

- In exceptional circumstances, amounts reported on Line 513 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Line 514	Net TRS Contribution Base Revenues

Net TRS contribution base revenues should equal the amounts reported on Line 512 less the amounts reported on Line 513.

F. BLOCK 6: CERTIFICATION

Line 601 Filer 499 ID

Copy the Filer 499 ID from Line 101.

Line 602 Legal Name of Filer

Copy the legal name of the filer from Line 102.

Line 603 Certifications – Exemptions from Contribution Requirement(s)

In this line, filers may certify that they are exempt from one or more contribution requirement(s) by checking the box next to the mechanism(s) from which they are exempt.

- As explained above, the FCC Form 499 Telecommunications Reporting Worksheet enables telecommunications carriers and service providers to satisfy a number of requirements in one consolidated form.
- Not all entities that file the Telecommunications Reporting Worksheet must contribute to all of the support and cost-recovery mechanisms (universal service, LNP, TRS, and NANPA). For example, certain telecommunications providers that are not telecommunications carriers must contribute to the universal service support mechanisms, but not to the TRS, LNP, and NANPA mechanisms.
- Section IIIA provides summary information on which filers must contribute and which filers are exempt from particular contribution requirements.

Filers that certify that they are exempt from one or more mechanism(s) should use the space provided on Line 603 to explain the exemption.

Note. It is not necessary for a filer to certify that it is *de minimis* for universal service purposes because the universal service administrator can determine whether a filer meets the contribution threshold from other information provided on the form. If, however, a reseller or other provider of telecommunications qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service. Such a reseller or other provider of telecommunication must be treated as an end user when the underlying carrier(s) file an FCC Form 499.

Line 604 Regulatory Fee Exemptions

In this line, filers indicate whether they are exempt from FCC regulatory fees or the filer is an “exempt telecommunications company.”⁴⁸

- A state or local governmental entity is any state, possession, city, county, town, village, municipal corporation, or similar political organization.⁴⁹

⁴⁸ 47 CFR § 1.1162(c). The FCC will presume that otherwise exempt carriers prefer to pay FCC regulatory fees unless they check this box.

⁴⁹ 47 CFR § 1.1162(b).

- The second check box identifies organizations duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. § 501 or by state certification.⁴⁷ These organizations typically qualify for non-profit status under sections 501(c)(3) or 501(c)(12).

Note that such entities are not exempt from universal service, TRS, LNP, or NANPA contributions unless they qualify under some other exemption (i.e., interstate service providers that have mobile service or satellite service revenues but that do not have interstate local revenues or interstate toll revenues are exempt from payment of ITSP fees. Interstate service providers that provide service to only other carriers are also exempt from ITSP regulatory fees. Carriers whose total regulatory fee payment obligation is \$1,000 or less are also exempt).

Line 605 Request for Nondisclosure of Revenue Information

Filers may use the box in Line 605 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet.

- By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet.
- This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.⁴⁸

All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2-B contact information) of the entities that file the Telecommunications Reporting Worksheet and information on which filers contribute to which funding mechanisms, including entities that checked the boxes in Line 605.

Line 606-611 Officer Certification

An officer of the filer must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and complete.

- Officers of entities making consolidated filings should refer to Section III.B and must certify that they comply with the conditions listed in that section.
- An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement). Preferably, the signing officer would be a vice-president for finance, comptroller, treasurer, or a comparable officer holding a financial position. Alternatively, the officer signing the Form preferably would be the president or vice president of operations. If the filer is a sole proprietorship, the owner must sign the certification.

Capable filers must enter data, and verify, submit, and certify FCC Forms 499-A and 499-Q online via USAC's web-based data entry system, E-File.

- An electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form.

⁴⁷ 47 CFR § 1.1162(c).

⁴⁸ 47 CFR § 0.459; see *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

- By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form.
- Visit <https://www.usac.org/service-providers/contributing-to-the-usf-forms-to-file/> for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under Title 18 of the United States Code.⁹⁰

Line 612	Type of Filing

Indicate whether this filing is an original filing for the year, due on April 1, a registration filing for a new service provider, a filing with revised registration information, or a filing with revised revenue information. See section III.D for information on the obligation to file revisions.

V. CALCULATION OF CONTRIBUTIONS

Filers do not calculate the amounts that they must contribute in this Worksheet. The administrators will use the revenue information on the Worksheet to calculate a funding base and individual contributions for each support mechanism. Individual contributions are determined by the use of “factors”—factors reflect the total funding requirement of a particular mechanism divided by the total contribution base for that mechanism. Information on the contribution bases and individual filer contributions are shown below in Table 4.

Table 4: Contribution Bases

Support Mechanism	Funding Basis
Universal service	Line 423(d) + Line 423(e)* less: revenues corresponding to universal service contributions**
TRS (Filers with end-user revenues must pay a minimum of \$25)	Line 514(a) for contributions funding IP CTS, ⁹¹ IP Relay, ⁹² and VRS. ⁹³ Line 514(b) for contributions funding all other forms of TRS
NANPA (Filers with end-user revenues must pay a minimum of \$25. Filers with no end-user revenues must pay \$25.)	Line 420(a) plus: Line 412(a) less: Line 511(a)
LNPA – by region (Filers with only carrier’s carrier revenue in a region must pay \$100 for that region)	Line 420(a) plus: Line 412(a) less: Line 511(a) times: percentages on Lines 503 through 509

⁹⁰ See 18 U.S.C. § 1001.

⁹¹ See 47 CFR 64.601(a)(22).

⁹² See 47 CFR 64.601(a)(23).

⁹³ See 47 CFR 64.601(a)(50).

- * Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. *See* 47 CFR § 54.706(c).
- ** The contribution base for an individual filer is the projected collected interstate and international revenues for the quarter, reduced by an imputed amount of universal service support pass-through charges, based on the actual factor for the quarter. *See Contribution Methodology Order*, 17 FCC Rcd 24952; *see, e.g.*, Proposed First Quarter 2004 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 25111 (2003). *See also* FCC, Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support, <https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

Monthly billings for universal service are based on projected collected revenue information filed on the quarterly FCC Form 499-Q.

- Historical amounts reported on FCC Form 499-Q Line 116(b) and (c) correspond to FCC Form 499-A Line 420(d) and (e), respectively.
- Projected collected revenues on FCC Form 499-Q Line 120(b) and (c) correspond to net universal service base revenues on FCC Form 499-A Line 423(d) and (e), respectively.
- The FCC Form 499-Q provides instructions for projecting revenues, and for removing uncollectible amounts from billed revenue projections.
- The amounts filed on the FCC Form 499-A are used to review and true-up FCC Form 499-Q filings and associated contributions.

VI. ADDITIONAL INFORMATION

A. REMINDERS

- File the FCC Form 499-A online at <https://forms.universalservice.org>.
- Contributors are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for five years. *See* section III.E.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* section III.B. Each affiliate or subsidiary must show the same Affiliated Filers information on Lines 106.1 and 106.2.
- Provide data for all lines that apply. Show a zero for services for which the filer had no revenues for the filing period.
- Be sure to include on Line 112 all names by which the filer is known to customers, including the names of agents or billers if those names appear on customer bills.
- Telecommunications providers that are required to contribute to universal service support mechanisms must also file quarterly FCC Forms 499-Q. *See* section III.C.
- Wherever possible, revenue information should be taken from the filer's financial records.
- The Worksheet must be signed by an officer of the filer. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* section III.C.

- Filers must re-file parts of the Worksheet if the Agent for Service of Process or FCC Registration information changes during the year.

FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the Commission's web site, at <https://www.fcc.gov/reports-research/guides/common-carrier-filing-requirements-information-firms-providing-telecommunications-services>.

B. PAPERWORK REDUCTION ACT NOTICE

Section 52.17 of the Federal Communications Commission's rules require all telecommunications carriers and interconnected VoIP providers to contribute to meet the costs of establishing numbering administration, and directs that contributions shall be calculated and paid in accordance with the FCC Form 499-A or Worksheet. 47 CFR § 52.17. Section 52.32 requires the local number portability administrators shall recover the shared costs of long-term number portability from all telecommunications carriers and interconnected VoIP providers. 47 CFR § 52.32. Sections 54.706, 54.711, and 54.713 require all interstate telecommunications carriers, interconnected VoIP providers, providers that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Worksheet once a year and the FCC Form 499-Q four times a year. 47 CFR §§ 54.706, 54.711, 54.713. Section 64.604 requires that every common carrier, interconnected VoIP provider, and non-interconnected VoIP provider contribute to the TRS Fund on the basis of its relative share of end-user revenues that are subject to contributions based on information provided in this Worksheet. 47 CFR §§ 64.601(b), 64.604(c)(5)(iii)(A) and (B). Section 64.1195 and the Commission's orders require all telecommunications carriers and interconnected VoIP providers to register using the FCC Form 499-A. 47 CFR § 64.1195(a).

This collection of information stems from the Commission's authority under sections 151(i), 225, 251, 254, 258, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(i), 225, 251, 254, 258, 616. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms, the TRS support mechanism, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for shared costs of long-term number portability. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 13.5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, you may write the Federal Communications Commission, AMD-PPM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to pra@fcc.gov. DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

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 Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act to collect the information we request on this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative

body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of rules 1.47, 52.17, 52.32, 54.713, 64.604, and 64.1195. 47 CFR §§ 1.47, 52.17, 52.32, 54.713, 64.604, 64.1195.

The foregoing notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

Appendix A

How to determine if a filer met the universal service *de minimis* standard for calendar year 2024

(1)	<i>Interstate contribution base for filer</i> Enter Line 423(d) from FCC Form 499-A.	\$
(2)	<i>International contribution base for filer</i> Enter Line 423(e) from FCC Form 499-A.	\$
(3)	<i>Interstate contribution base for all affiliates*</i> Enter sum of Line 423(d) from FCC Forms 499-A of all affiliates.	\$
(4)	<i>International contribution base for all affiliates</i> Enter sum of Line 423(e) from FCC Forms 499-A of all affiliates.	\$
(5)	<i>Consolidated interstate contribution base</i> Enter Line (1) + Line (3).	\$
(6)	<i>Consolidated interstate and international contribution base</i> Enter Line (2) + Line (4) + Line (5).	\$
(7)	<i>Consolidated interstate contribution base as a percentage of consolidated interstate and international contribution base</i> Enter Line (5) / Line (6).	%
(8)	<i>LIRE Exemption **</i> If Line (7) > 12%, enter Line (2). If Line (7) ≤ 12%, enter \$0.	\$
(9)	<i>Contribution base to determine de minimis qualification</i> Enter Line (1) + Line (8).	\$
(10)	<i>2025 Form 499-A de minimis estimation factor</i>	0.239 ***
(11)	<i>Estimated annual contribution</i> Enter Line (9) x Line (10)	\$

* Unless otherwise specifically provided, an affiliate is a “person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.” For this purpose, the term “owns” means to own an equity interest (or the equivalent thereof) of more than 10 percent. See 47 U.S.C. § 153(2).

** Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. See 47 CFR § 54.706(c).

*** The estimation factor is based on a contribution factor of 0.313, which is the average of the four contribution factors of 2023, and a corresponding circularity factor of 0.237454. Actual contribution and circularity factors for calendar year 2024 may have increased or decreased depending on quarterly changes in program costs and the projected contribution base. Using the estimation factor, filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute directly to the universal service support mechanisms. Note that telecommunications carriers and interconnected VoIP service providers must file this Worksheet regardless of whether they qualify for the *de minimis* exemption. Telecommunications providers may qualify for one of the exemptions to filing as detailed in Sections II.A.2.

Appendix B

Explanation of categories listed in Line 105

CAP/CLEC (Competitive Access Provider/Competitive Local Exchange Carrier). — Competes with incumbent local exchange carriers (ILECs) to provide local exchange services, or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers, other than Coaxial Cable providers.

Cellular/PCS/SMR (Cellular, Personal Communications Service, and Specialized Mobile Radio). — Provides primarily wireless telecommunications services (wireless telephony). This category includes all providers of real-time two-way or push-to-talk switched voice services that interconnect with the public switched network, including providers of prepaid phones and public coast stations interconnected with the public switched network. *See* 47 CFR § 80.451. This category includes the provision of wireless telephony by resale. An SMR provider would select this category if it primarily provides wireless telephony rather than dispatch or other mobile services.

Coaxial Cable. — Uses coaxial cable (cable TV) facilities to provide local exchange services or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers.

ILEC (Incumbent Local Exchange Carrier). — Provides local exchange service. An incumbent LEC or ILEC generally is a carrier that was at one time franchised as a monopoly service provider or has since been found to be an incumbent LEC. *See* 47 U.S.C. § 251(h).

IXC (Interexchange Carrier). — Provides long distance telecommunications services substantially through switches or circuits that it owns or leases.

Interconnected VoIP Provider. — Provides “interconnected VoIP service,” which is a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Local Reseller. — Provides local exchange or fixed telecommunications services by reselling services of other carriers.

Non-Interconnected VoIP Provider. — Provides non-interconnected VoIP service, which is a service that (i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol and (ii) requires Internet protocol compatible customer premises equipment, but (iii) is not an interconnected VoIP service.

Operator Service Provider (OSP). — Serves customers needing the assistance of an operator to complete calls or needing alternate billing arrangements such as collect calling.

Paging — Provides wireless paging or wireless services. This category includes the provision of paging services by resale.

Payphone Service Provider. — Provides customers access to telephone networks through payphone equipment, special teleconference rooms, etc. Payphone service providers also are referred to as payphone aggregators.

Prepaid Calling Card Provider. — Provides prepaid calling card services by selling prepaid calling cards to the public, to distributors or to retailers. Prepaid card providers provide consumers the ability to place long distance calls without presubscribing to an interexchange carrier or using a credit card. Prepaid card providers typically resell the toll service of other carriers and determine the price of the

service by setting the price of the card, assigning personal identification numbers (PINs) and controlling the number of minutes that the card can be used for. Companies who simply sell cards created by others are marketing agents and do not file.

Private Service Provider. — Offers telecommunications to others for a fee on a non-common carrier basis. This would include a company that offers excess capacity on a private system that it uses primarily for internal purposes. This category does not include SMR or Satellite Service Providers.

Satellite Service Provider. — Provides satellite space segment or earth stations that are used for telecommunications service.

Shared-Tenant Service Provider /Building LEC. — Manages or owns a multi-tenant location that provides telecommunications services or facilities to the tenants for a fee.

SMR (dispatch) (Specialized Mobile Radio Service Provider). — Primarily provides dispatch services and mobile services other than wireless telephony. While dispatch services may include interconnection with the public switched network, this category does not include carriers that primarily offer wireless telephony. This category includes LTR dispatch or community repeater systems.

Stand-Alone Audio Bridging Provider /Integrated Teleconferencing Service Provider. — Allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission).

Toll Reseller. — Provides long distance telecommunications services primarily by reselling the long distance telecommunications services of other carriers.

Wireless Data. — Provides mobile or fixed wireless data services using wireless technology. This category includes the provision of wireless data services by resale.

The Worksheet also provides boxes for “Other Local,” “Other Mobile,” and “Other Toll.” If one of these categories is checked, the filer should describe the nature of the service it provides under the check boxes. For example, filers that provide toll service that: (1) uses ordinary customer premises equipment with no enhanced functionality; (2) originates and terminates on the public switched telephone network and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology should enter “VoIP toll” in the explanation field.⁹⁴

Appendix C – Definitions for International Reporting

Country-Beyond Service is an International Calling Service (ICS) provided and billed by a U.S. International Service Provider to a customer located in a foreign point in which case the customer, using a credit card or calling card issued by the U.S. International Service Provider, calls a telephone number in another foreign point.

Country-Direct Service is ICS provided by a U.S. International Service Provider to a customer located in a foreign point in which case the customer, using a credit card or calling card issued by the U.S. International Service Provider, calls a telephone number in the United States.

Foreign-Billed (ICS) refers to ICS that originates or terminates with an end-user in the United States, and that is billed by a Foreign Service Provider.

Foreign Carrier refers to any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of

⁹⁴ See *AT&T IP-in-the-Middle Order*, 19 FCC Rcd 7457.

the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country. The term “Foreign Carrier” does not refer to the nationality of the employees or owners of a communications entity. An affiliate of a Foreign Carrier that operates in the United States as a common carrier is a U.S. Carrier.

Foreign Service Provider refers to a Foreign Carrier; or any person or entity in a foreign point that provides VoIP service connected to the PSTN in a foreign point or between a foreign point and the United States; or any person or entity in a foreign point that provides International Call Completion Service to a U.S. International Service Provider or obtains International Call Completion Service from a U.S. International Service Provider.

International Calling Service (ICS) refers to International Message Telephone Service (IMTS) and International VoIP Service Connected to the PSTN, including International Call Completion Service for IMTS or International VoIP Service Connected to the PSTN.

International VoIP Service Connected to the PSTN refers to service between the United States and any foreign point that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet Protocol-compatible customer premise equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) or to terminate calls to the PSTN. International VoIP Service Connected to the PSTN consists of Interconnected VoIP Service and “one-way” VoIP services, between the United States and any foreign point. (One-way VoIP services enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN but do not permit the user to make calls terminating to the PSTN.) International Call Completion Service for International VoIP Service Connected to the PSTN is included within the definition of International VoIP Service Connected to the PSTN.

Re-originated Foreign ICS refers to ICS traffic from a foreign point that is transmitted to the United States for retransmission to a destination foreign point, but that is not handled as Traditional Transiting ICS.

Settlement Payout refers to the expense (including any transiting fees) that a U.S. International Service Provider incurs for International Call Completion Service to a foreign point obtained from a Foreign Service Provider.

Settlement Receipt refers to the revenue that a U.S. International Service Provider bills for International Call Completion Service to the United States provided to a Foreign Service Provider.

Traditional Transiting ICS refers to ICS from a foreign point that (a) transits the United States prior to completion at a foreign point and (b) is settled at a rate agreed upon by the Foreign Service Provider in the origination foreign point and the Foreign Service Provider in the destination foreign point. The U.S. International Service Provider that provides the transiting service is reimbursed for its handling and transmission of the traffic by the Foreign Service Provider in the origination foreign point.

U.S.-Billed Facilities ICS refers to U.S.-Billed ICS that a U.S. International Service Provider provides as Facilities ICS.

U.S.-Billed ICS refers to an ICS call that originates or terminates in the United States and that is billed by a U.S. International Service Provider to an end-user customer or to a U.S. International Service Provider that is taking the service for resale; or a Reoriginated Foreign ICS call that is billed by a U.S. International Service Provider to a Foreign Service Provider; or a country-beyond call.

FCC Form 499-Q Telecommunications Reporting Worksheet Quarterly Filing for Universal Service Contributors > Please read instructions before completing <				Approval by OMB 3060-0855	
Block 1: Contributor Identification Information			101 Filer 499 ID		
102 Legal name of reporting entity					
103 Filer's IRS employer identification number					
104 Name telecommunications provider is doing business as					
105 Affiliated Filers Name [All affiliated companies should show same name here. In most cases, the Affiliated Filers Name will be the holding company name]			Check if filer has no affiliates: ☐		
105.1 Affiliate Filers Name IRS employer identification number			[Enter 9 digit number]		
106 Filer's FCC Registration Number (FRN)			[Enter 10 digit number]		
107 Complete mailing address of reporting entity's corporate headquarters					
Block 2: Contact Information					
108 Person who completed this worksheet			First	MI	Last
109 Telephone number of this person			() -		
110 Fax number of this person			() -		
111 Email of this person					
112 Billing address and billing contact person:					
Block 3: Contributor Historical and Projected Revenue Information					
113 Indicate which quarterly filing this represents		<u>Filing due</u>	<u>Historical revenues (lines 115-118) for</u>	<u>Projected revenues (lines 119-120) for</u>	
☐ November 1, 2024		July 1 – September 30, 2024	January 1 – March 31, 2025		
☐ February 1, 2025		October 1 – December 31, 2024	April 1 – June 30, 2025		
☐ May 1, 2025		January 1 – March 31, 2025	July 1 – September 30, 2025		
☐ August 1, 2025		April 1 – June 30, 2025	October 1 – December 31, 2025		
114 Check if using safe harbor to allocate interstate/intrastate revenues for each of the following (as applicable): Cellular & broadband PCS: ☐ Paging: ☐ Analog SMR: ☐ Interconnected VoIP: ☐					
Historical billed revenues with no allowance or deductions for uncollectibles. See Instructions.			Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115 Telecommunications provided to other universal service contributors for resale as telecommunications or as interconnected VoIP					
116 End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues					
117 All other goods and services			Column (b) and (c) not requested for Lines 117 and 118		
118 Gross-billed revenues from all sources [sum of above]					
119 Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues					
120 Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues					
Block 4: CERTIFICATION: to be signed by an officer of the reporting entity					
121 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.					☐
I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.					
122 Signature					
123 Printed name of officer			First	MI	Last
124 Position with reporting entity					
125 Email of officer (Required if available)					
126 Date					
127 This filing is: ☐ Original filing ☐ Revised filing [revisions due within 45 days of original filing deadline]					
File this form online https://forms.universalservice.org/portal/login For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (888) 641-8722 or via email: Form499@usac.org					
PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001					
Save time, avoid problems – file electronically at http://forms.universalservice.org				FCC Form 499-Q / 2025	

Telecommunications Reporting Worksheet, FCC Form 499-Q 2025
Instructions for Completing the Quarterly
Worksheet for Filing Contributions
to Universal Service Support Mechanisms

* * * * *

NOTICE: Sections 54.706, 54.711, and 54.713 of the Federal Communications Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected voice-over-Internet-protocol (VoIP) providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Telecommunications Reporting Worksheet (FCC Form 499-Q or Worksheet) on February 1, May 1, August 1, and November 1, each year. 47 CFR §§ 54.706, 54.711, 54.713. This collection of information stems from the Commission's authority under Sections 151(i) and 254 of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. §§ 151(i), 254. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 10.0 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, project growth or decline in revenues, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, you may write the Federal Communications Commission, AMD-PPM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to PRA@FCC.gov. DO NOT SEND COMPLETED WORKSHEETS 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 Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, and 64.604 of the Commission's rules. 47 CFR §§ 1.47, 52.17, 52.32, 54.713, and 64.604.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. §§ 3501, *et seq.*

* * * * *

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File FCC Form 499-Q online. http://forms.universalservice.org .

I. Introduction

As required under the Communications Act of 1934, as amended,¹ the Commission has established procedures to finance universal service support mechanisms. To accomplish this Congressionally-directed objective, contributions are collected from telecommunications carriers providing interstate telecommunications and certain other providers of interstate telecommunications (including interconnected VoIP providers). This Worksheet sets forth information that the contributor must submit, so that the administrator of the universal service support mechanisms may calculate and assess contributions.²

II. Filing Requirements and General Instructions

A. Who Must File

All providers of interstate telecommunications within the United States,³ with very limited exceptions, must file an FCC Form 499-Q Telecommunications Reporting Worksheet.⁴

For purposes of determining whether an entity provides telecommunications, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging services; dispatch services; mobile radio services;⁵ operator services; access to interexchange service; business data services; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; frame relay, asynchronous transfer mode (ATM) and Multi-Protocol Label Switching (MPLS); audio bridging services;⁶ and interconnected VoIP services.⁷ Note, for example, that all

¹ 47 U.S.C. §§ 151 *et seq.*

² On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (*Quarterly Reporting Order*); *see also* 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999).

³ For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

⁴ Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications services" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). For more information on these terms, *see* 47 U.S.C. §§ 153(50), (51); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Reform Order*).

⁵ *See Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, WC Docket No. 06-122, Order, 23 FCC Rcd 12836 (WCB 2008).

⁶ *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10737-38, para. 22 (2008), *petition for reconsideration denied*, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, 28 FCC Rcd 898 (2012), *subsequent history omitted*.

⁷ *See* 47 CFR § 9.3 (defining interconnected VoIP service).

incumbent and competitive local exchange carriers provide access to an interstate public network and, therefore, provide interstate telecommunications. There are no exemptions for data or non-voice services.

Note also that entities must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," and interconnected VoIP providers must file this Worksheet if they do not qualify for the *de minimis* exemption under the Commission's universal service rules.

Marketing agents (i.e., entities that market services on behalf of a telecommunications provider) are not themselves telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from underlying carrier revenues. A reseller is not a marketing agent.

The following three sections list types of telecommunications providers that are not required to file the FCC Form 499-Q. Note that such entities are treated as end users by their underlying carriers and therefore may be subject to pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.⁸ Thus, potential contributors whose contribution to the universal service support mechanisms would be *de minimis* under the universal service rules are not required to file the Worksheet (FCC Form 499-Q) or contribute directly to universal service. Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers and all affiliates must first complete block 3 of the Worksheet and enter the amounts from Line 120(b) and 120(c) in Figure 1.

Telecommunications providers that do not file this Worksheet because they are *de minimis* for purposes of universal service contributions (and need not file for any other purpose) should retain Figure 1 and documentation of their contribution base revenues nonetheless for five years and may be required to provide it to the FCC, the FCC's Data Collection Agent or the Universal Service Administrative Company (USAC) upon request.⁹

Figure 1
Table to determine if a contributor meets the *de minimis* standard
for purposes of universal service contribution during 2025

1	Interstate contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(b))	\$
2	International contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(c))	\$
3	Interstate contribution base for the quarter for all affiliates* (total of amounts reportable on FCC Form 499-Q; Line 120(b) for all affiliates of the filer)	\$
4	International contribution base for the quarter for all affiliates (total of amounts reportable on FCC Form 499-Q; Line 120(c) for all affiliates of the filer)	\$

⁸ 47 CFR § 54.708.

⁹ See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386-87, para. 27 (2007) (codified at 47 CFR § 54.706(e)) (*USF Comprehensive Review Order*).

5	Consolidated interstate contribution base: Line (1) + Line (3)	\$
6	Consolidated international contribution base: Line (2) + Line (4)	\$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	\$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line (1)	\$
10	If the amount in Line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter \$0 (See 47 CFR § 54.706(c))	\$
11	Revenue base for the filer for the quarter for determining contributions to universal service support mechanisms: Line (9) + Line (10)	\$
12	If the projected revenues on Lines (1) and (2) include projected pass-through charges for contributions to federal universal service support mechanisms, enter the total amount of projected pass-through charges. If the projected revenues on Lines (1) and (2) do not include any universal service pass-through charges, enter \$0.	\$
13	Contribution base; Line (11) – Line (12)	\$
14	Annualizing multiplier	4
15	Annualized contribution base; Line (13) multiplied by Line (14)	
16	2025 Estimation factor for determining whether to file a 499-Q	0.256 **
17	Estimated annual contribution: amount in Line (15) multiplied by Line (16)	\$
*	Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term 'owns' means to own an equity interest (or the equivalent thereof) of more than 10 percent. See 47 U.S.C. § 153(2).	
**	The estimation factor is based on a contribution factor of 0.344, which is the average of the four contribution factors announced for 2024, and a corresponding circularity factor of 0.254921. The public notices announcing the quarterly contribution factors are available at http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support. <u>Note:</u> Actual contribution factors for future quarters may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as <i>de minimis</i> and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute to the universal service support mechanisms and must file this Worksheet.	

2. Exception for government, broadcasters, schools, and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service. As explained above, these non-contributors must be treated as

end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.

3. Exception for systems integrators and self-providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products. Legal entities that provide services only to themselves or to commonly-owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee, or that provides interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation, articles of formation or similar legal documents are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line 105 – Affiliated Filers Name.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:¹⁰

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;¹¹
- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- (5) Customers have a single point of contact;
- (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
- (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;¹²
- (8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American

¹⁰ *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002).

¹¹ The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

¹² A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

- Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- (10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.¹³

Each year, entities choosing to file on a consolidated basis must file a statement with the Commission's Data Collection Agent certifying that they meet all of the above conditions.¹⁴ Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the FCC Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent (*see* address in Figure 2). Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

C. When and Where to File

Filers are required to file this form electronically, effective April 1, 2015. Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day. There is no fee to file this form.

Figure 2: Filing schedule

What to file	When to file	Where to file **
Completed FCC Form 499-A	April 1	http://forms.universalservice.org
Completed FCC Form 499-Q (universal service contributors only) *	February 1 May 1 August 1 November 1	http://forms.universalservice.org
Consolidated filer certification <i>See</i> section II.B for format and content requirements for	April 1	<u>Data Collection Agent</u> c/o Universal Service Administrative Company form499@usac.org

¹³ For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

¹⁴ *See* address in Figure 2 (Filing Schedule).

consolidated filer certification		
* February 1: FCC Form 499-Q containing revenue information for October 1 through December 31 of the prior calendar year and projections for April 1 through June 30. May 1: FCC Form 499-Q containing revenue information for January 1 through March 31 and projections for July 1 through September 30. August 1: FCC Form 499-Q containing revenue information for April 1 through June 30 and projections for October 1 through December 31. November 1: FCC Form 499-Q containing revenue information for July 1 through September 30 and projections for January 1 through March 31 of the coming year.		
** The universal service administrator will calculate the amount of contribution due and send a notification to the billing contact email address identified in Line (112) of the FCC Form 499-Q that the billing statement is ready to be viewed in E-File.		

For information on filing electronically, go to <http://forms.universalservice.org/>.

Filers may file the consolidated filer certifications, and traffic studies by submitting electronic copies to: form499@usac.org.

D. Rounding of Numbers and Negative Numbers

Dollar Amounts. Reported revenues in Block 3 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. **Dollar amounts may be reported in whole dollars.** For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand, or \$2.272 million. Enter \$0 in any line for which the contributor had no revenues for the period being reported.

Negative Numbers. Contributors are directed to provide billed revenues on Lines 115 through 119 without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. The amount of projected uncollectibles (the difference between Line 119 and Line 120) cannot exceed projected billings. Therefore, do not enter negative numbers on the form.

E. Obligation to File Revisions

A contributor must file a revised 499-Q Worksheet if it discovers an error in the data that it reports, i.e., if the filer discovers that it omitted or misclassified a major category of revenue. However, revised filings must be made within 45 calendar days of the original filing date. In general, the historical revenues contained in the quarterly filings will be based on unaudited books from a point in time and the projections will represent the filer's expectations as of a point in time. Contributors need not file revisions to the FCC Form 499-Q as a result of ordinary accounting adjustments such as out-of-period adjustments. Revenue information from the FCC Form 499-A will be used to ensure that contributions for the whole year are based on all subject revenues for the year.

Filers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units. In the event that a filer that submitted an FCC Form 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify USAC, the Form 499 Data Collection Agent.

F. Record Keeping

Filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and

to allocate interstate revenues, for five years.¹⁵ Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's Office of Inspector General, to the USF Administrator, and to their auditors upon request.¹⁶ Review by the Commission or the Administrator may cover any existing corporate records, not just those specifically maintained for the five year period.¹⁷ Entities that acquire carrier operations through acquisition of property, consolidation, merger, etc., must maintain the records of the acquired entity.¹⁸

G. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.¹⁹ In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.²⁰ Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.²¹

III. Specific Instructions

A. Block 1: Contributor Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information.

Line 101 – enter the "Filer 499 ID" number for the filing entity. This code is assigned by the Commission's Data Collection Agent after a company files its first FCC Form 499-A. Filer 499 IDs for current filers can be found at <http://apps.fcc.gov/cgb/form499/499a.cfm> or in the FCC report *Telecommunications Provider Locator*, which is available on the Commission's web site at <http://www.fcc.gov/wcb/iatd/lec.html>. This code should be entered at the top of any cover letter or supporting documentation. New filers are assigned Filer 499 ID numbers after a completed FCC Form 499-A Telecommunications Reporting Worksheet is received by the Data Collection Agent.

Line 102 – enter the legal name of the filer as it appears on articles of incorporation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis.²²

¹⁵ See *USF Comprehensive Review Order*, 22 FCC Rcd at 16386-87, para. 27 ("These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation").

¹⁶ See *id.* Administrator refers to the Universal Service Administrative Company.

¹⁷ See 47 U.S.C. § 218.

¹⁸ See 47 CFR § 42.1.

¹⁹ In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. See 47 CFR § 1.1910; *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*, MD Docket No. 02-339, 19 FCC Rcd 6540 (2004).

²⁰ See 47 CFR § 54.713 (universal service); 47 CFR § 64.604(c)(5)(iii)(B) (TRS); see also 47 CFR § 52.17(b) (NANPA); 47 CFR § 52.32(c) (LNPA).

²¹ See 47 CFR § 54.711.

²² See section II-B, page 6, for information on making consolidated filings.

Line 103 – provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file any federal taxes, if the filer offers services subject to those taxes. Do not use individual social security numbers for the federal EIN. If a filer lacks an EIN (*i.e.* has no taxpayer identification number to provide other than an individual social security number), it should contact USAC (see section IV.B for contact information) so that it can be assigned an alternative identification number. Consolidated filers must provide the EIN associated with the Affiliated Filers Name.

Line 104 – provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Lines 105 and 105.1 – use this block to provide a common identifier for all affiliated filers (the “Affiliated Filers Name”). This is typically the name of the filer's holding company or controlling entity, if any. Amongst a large group of affiliates, this may be the name of the predominant commonly owned or controlled entity. The common name used by all affiliates need not be a common carrier. All reporting affiliates or commonly controlled entities should have the same Affiliated Filers Name and IRS EIN associated with the Affiliated Filers Name appearing on Line 105 and Line 105.1. For those entities also required to submit information to the Broadband Data Collection (BDC) system, use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions to indicate common ownership or control.²³

- Unless otherwise specifically provided, an affiliate is a “person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.”²⁴ For this purpose, the term ‘owns’ means “to own an equity interest (or the equivalent thereof) of more than 10 percent.”²⁵
- If the filer has no affiliates, check the appropriate box on Line 105.

Line 106 – provide the filer’s FCC Registration Number (FRN). The FRN is a ten digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing/Filing systems and RAMIS (the Commission’s Revenue Accounting Management Information System.) This number is assigned by CORES (the Commission Registration System) and can be obtained at <https://apps.fcc.gov/core/userLogin.do>. For assistance, contact the CORES help desk at (877) 480-3201 or by e-mail at CORES@fcc.gov.

Line 107 – enter the complete mailing address of the corporate headquarters of the reporting entity.

B. Block 2: Contact Information

Lines 108-111 – enter the name, telephone number, fax number, and email address of the person who filled out the FCC Form 499-Q. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify or audit information provided in the Telecommunications Reporting Worksheet. Email addresses must be provided and, other than those for agents for service of process, will not be shared with parties other than the Commission or the Administrator.

²³ The Commission adopted an Order ending the collection of broadband deployment data through the FCC Form 477 in December 2022. See *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, paras. 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022). Pursuant to the Order, the Commission continues to collect broadband and voice subscription data using the FCC Form 477, but filers submit such data solely through the BDC system. *Id.* at para. 13.

²⁴ See 47 U.S.C. § 153(2).

²⁵ *Id.*

Line 112 – provide a billing contact person name, address and email address for administrators to send billing information for contributions to the universal service fund. The Administrator will send a notification to the billing contact email address that the statement is ready to be viewed in E-File, unless other arrangements are made via written request.

C. Block 3: Contributor Revenue Information

Line 113 – Check the appropriate filing due date corresponding to the historical and projected revenue you are reporting.

Lines 114-120– Provide detailed revenue data.

1. Separating Telecommunications Revenues from Service Provided to Other Contributors to the Federal Universal Service Support Mechanisms for Resale [Line 115] from Telecommunications Revenues from Service Provided to End Users [Line 116] (carrier's carrier vs. end-user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) revenues from contributing resellers, intercarrier compensation, and universal service support and (2) revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account. The FCC Form 499-A instructions provide more extensive information about each of these categories and are incorporated by reference in these instructions. Filers who are not familiar with the more explicit descriptions provided in Section IV.C.4 of the annual Telecommunications Reporting Worksheet (FCC Form 499-A) instructions should familiarize themselves with those instructions before completing this form.

Revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see below*) are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

Revenues from Resellers -- For the purpose of completing Line 115, a "reseller" is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications into its own offerings; *and* (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from those offerings.²⁶ Specifically, a customer is a reseller if it incorporates purchased wholesale service into an offering that is, at least in part, assessable telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.²⁷

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that meet the definition of reseller. The requirements for those procedures are described in Section IV.C.4 of the FCC Form 499-A instructions. Filers that do not comply with the standard described therein will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end-user revenues.

²⁶ *Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13781-82, para. 3 (2012) (*2012 Wholesaler-Reseller Clarification Order*).

²⁷ Thus, for example, if a customer purchases a DS1 line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

Revenues from Entities Exempt from USF Contributions -- For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and service providers may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues on Line 115. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Line (116). Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.

2. Column (a) - total revenues

The reporting entity must report gross revenues from all sources, including nonregulated and non-telecommunications services on Lines 115 through 117 and these must add to total gross revenues as reported on Line 118. Gross revenues include account set-up, connection, service restoration, termination and other non-recurring charges. These charges should be reported on the same line that the filer reports any associated recurring revenue. For example, an early termination charge to an end user for an interstate private line service would be reported as interstate revenue on Line 116. Deposits are not revenue. Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross revenues do not include amounts that cannot be billed to customers. Gross revenues should include collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats. Gross billed revenues may be distinct from booked revenues. National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.²⁸

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate.²⁹

Where an entity obtains, through purchase, merger or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, the acquiring company must report all telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.

Gross revenues also should include any surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the contributor or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be included in Line 116. Filers should report as intrastate revenues state universal service charges only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills. Other surcharges treated as revenue should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. contributors with no allowances for settlement payments. International settlement receipts for foreign billed service should not

²⁸ For additional information regarding the reporting of revenues filers should refer to the FCC Form 499-A Instructions. *FCC Form 499-A Instructions* at 15-30.

²⁹ See also section II-E above.

be included in U.S. telecommunications revenues.³⁰ Note that if the filer receives the traffic in the United States, then it is providing ordinary international service from the United States to a foreign point and receipts from the originating carrier would be reported as revenue on Line 116(c).

For FCC Form 499 purposes, credits that are issued by the filer may be recognized only when redeemed. In Form 499 worksheets, filers that use earned revenue to represent billed revenue may recognize credits when redeemed but may not report negative revenues. Other filers should include credits in uncollectibles, when earned.

For international private line services, U.S. providers must report on Line 116 revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the filer or by a partner provider in a foreign point. Revenues from circuits within the United States that connect a customer to an international circuit should be reported as interstate on Line 116.

Revenues from circuits that connect two foreign points should be reported on Line 118.

For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards.

If you have any revenue for Lines 115 and 116, you may not omit the dollar amounts from column (a) even if 100% of the revenue is for interstate or international service.

3. Column (b) and (c) - interstate & international

Columns (b) and (c) are provided to identify the part of gross revenues that arise from interstate and international services for Lines 115 and 116. Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. Interstate and international telecommunications means communications or transmission between a point in one State, Territory, possession of the United States or the District of Columbia and a point outside that State, Territory, possession of the United States or the District of Columbia. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed local number portability surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the end-user revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.³¹ In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

To the extent that contributors recover a non-traffic sensitive charge for the interstate portion of fixed local exchange service or for providing interstate or interstate access service from their customers through a subscriber line charge or access recovery charge, they must allocate those revenues to the interstate

³⁰ For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then reoriginates and carries the traffic to a foreign point, the filer would not include those settlement-like payments as revenues on the FCC Form 499-Q.

³¹ See *Universal Service Order*, 12 FCC Rcd at 9173, para. 7788776 (1997) (citing 47 CFR § 36.154(a)).

jurisdiction, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of accounts and records.³²

Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, on Line 116 but may not be reported as intrastate revenues.

Note: Where possible, filers should report their amount of total revenues that are interstate and international by using information from their books of account and other internal data reporting systems. Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (b) and (c), respectively. Total revenues entered in column (a) include revenues billed for intrastate service even though intrastate revenues are not reported separately on the Form 499-Q.

If interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers provide on the Worksheet good-faith estimates of these figures. Good-faith estimates must be based on information that is current for the filing period. Information supporting good-faith estimates must be made available to either the FCC, data collection agent, or to the Administrator upon request. For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Enter zero dollars in column (b) or column (c) if, and only if, there were no interstate or international revenues for the line for the reporting period.

Safe Harbors -- Note that the FCC provides the following safe harbor percentages of interstate wireless revenues associated with Lines 115, 116, 119 and 120:³³

37.1% of cellular and broadband PCS telecommunications revenues

12% of paging revenues

1% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. **All filers must report the actual amount of interstate and international revenues for these services.** For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

The FCC provides the following safe harbor percentage of interstate interconnected VoIP revenues associated with Line 115, 116, 119 and 120:³⁴

64.9% of interconnected VoIP telecommunications revenues

These safe harbor percentages may not be applied to universal service pass-through charges or other fixed local service revenues.

³² For example, to the extent that a contributor's tariff filing (or equivalent) indicates that a non-traffic sensitive charge is for interstate access, then revenues for such charge (or a portion thereof) must be allocated to interstate revenues for USF reporting purposes.

³³ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*2002 Second Contribution Methodology Order and FNPRM*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-60, paras. 11-15 (1998) (*Wireless Safe Harbor Order*).

³⁴ See *2006 Contribution Methodology Reform Order*, 21 FCC Rcd 7518 at 7532-33, 7545-46, paras. 25-27, 53-55.

Wireless telecommunications providers and interconnected VoIP providers that choose to avail themselves of these safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers and interconnected VoIP providers must make a single election, each quarter, whether to report actual revenues or to use the current safe harbor within the same safe harbor category.³⁵ So, for example, if in a calendar quarter a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

Note: Filers should use the same methodology (traffic study or safe harbor) to report interstate and international jurisdictions on the FCC Form 499-A as used on the FCC Form 499-Qs to forecast revenue in each quarter of the applicable calendar year. For example, if a filer projected revenue based on a safe harbor for the first two quarters and based on traffic studies for the final two quarters, the amounts reported in the FCC Form 499-A for the first two quarters would be based on actual billings for those quarters and the relevant safe harbors, and the amounts reported for the final two quarters would be based on actual billings for those quarters and the traffic studies for those quarters.

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service (*i.e.*, voice long distance) for a single price. Revenues for the whole bundle, except for tariffed subscriber line and PICC charges, should be reported on Line 116, as described more fully below. The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively.³⁶ Filers should make a good faith estimate of the amounts of interstate and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

Interconnected VoIP and CMRS providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.³⁷ In developing their traffic studies, interconnected VoIP and CMRS providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international. Any revenues associated with charges on customer bills that are identified as interstate or international must effectively be accounted for (*e.g.*, through proper weighting in a traffic study) as 100

³⁵ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order and Order on Reconsideration, 18 FCC Rcd 1421, 1424-25, para. 6 (2003) (“wireless telecommunications providers are ‘affiliated’ for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an ‘identity of interest’ with another contributor”). See also 47 CFR § 1.2110(c)(5).

³⁶ See *Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1414, para. 5 (2008) (defining “toll service”) (*Separately Stated Toll Order*).

³⁷ See *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534-36, 7547, paras. 29-33, 57; see also *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-51 (2001) (*CPE Bundling Order*).

percent interstate or international when reporting revenues.³⁸ Sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample. Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above. Mobile wireless providers and interconnected VoIP providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request. In addition, CMRS and interconnected VoIP providers that rely on traffic studies must submit those studies to USAC (see Figure 2 for filing instructions – including address for filing traffic studies, and filing deadlines). To enable USAC to match traffic studies filed by contributors with their FCC Form 499 filings, include the following identifying information at the top of each page of the traffic study: Filer ID; Company Name; Affiliated Filers Name (where applicable).

4. Explanation of historical revenue categories

Total gross revenue reported on Line 118 should equal the total of the detail amounts reported on Lines 115 through 117.

Line 114 – Use this line to indicate if filer is using safe harbors to allocate revenues (in Lines 119 and 120) between interstate and intrastate jurisdictions. Select all that apply. See instructions above for the use of safe harbors.

Line 115 – Revenues from services provided to other universal service contributors for resale. This line should contain revenues from telecommunications services provided to resellers (*i.e.*, telecommunications revenue derived from other universal service contributors). This category comprises what is commonly-referred to as “carrier’s carrier revenues.” Filers may wish to consult the instructions for FCC Form 499-A, Lines 303 through 314, when calculating this figure.

Line 116 – Universal service contribution base revenues. This line should contain end-user telecommunications revenues (*i.e.*, telecommunications revenues derived from entities that do not contribute directly to universal service), except for revenue from international calls that both originate and terminate in foreign points. Filers should consult the instructions for FCC Form 499-A, Line 420, when calculating this figure.

Line 117 – Other revenue that should not be reported in the universal service contribution base, including revenues for telecommunications services subject to forbearance from a contribution obligation. This line should contain revenue from international calls that both originate and terminate in foreign points and revenues that are reportable on FCC Form 499-A, Line 418.

Line 117 should include all non-telecommunications service revenues on the reporting entity's books as well as some revenues that are derived from telecommunications-related functions but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. Information services also are called enhanced services because they are

³⁸ See *Separately Stated Toll Order*, 23 FCC Rcd at 1418, para. 15. In developing traffic studies, toll service traffic must be identified and treated in a manner that recognizes that such traffic is more likely to be interstate or international than intrastate. See *id.* Additionally, appropriate weighting of the higher revenue that is often associated with toll service must be reflected in the traffic study or studies. See *id.*

offered over transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on Line 117. Line 117 should include revenues from published directory and carrier billing and collection services. Line 117 should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE). Line 117 should include inside wiring charges and inside wiring maintenance insurance. Line 117 should include the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE. Line 117 should include pole attachment revenues. Line 117 should include revenues from providing open video systems (OVS), cable leased access, cable service, and direct broadcast satellite (DBS) services. Line 117 should include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Line 117 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e., a carrier licensed in that country. Line 117 should include revenues from the provision of broadband Internet access services.

The Commission adopted two “safe harbor” methods for allocating revenue when telecommunications and CPE/enhanced services are offered as a bundled package.³⁹ The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications. Alternatively, contributors may elect to treat all bundled revenues as telecommunications revenues for purposes of determining their universal service obligations. Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context. Prepaid calling card providers may avail themselves of the bundled service safe harbors for separating revenue between telecommunications and information services.⁴⁰

Line 118 – Gross billed revenues from all sources. This line should equal the sum of revenues by type of service reported on Lines 115 through 117.

As noted above, for further detail on the types of revenues that should be reported on Lines 115 through 117, filers may wish to consult the Instructions for the FCC Form 499-A, available on USAC’s web site (<https://www.usac.org/service-providers/resources/forms/>).

5. Projected gross billed end-user interstate and international revenues

The projection quarter is the calendar quarter that starts two months after the filing date and finishes five months after the filing date. Line 119 should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions. These amounts should be the amounts that the filer anticipates reporting on Line 116, column (b) and column (c), in the FCC Form 499-Q filing due six months after the present filing date. In order to estimate these amounts, the filer could review the amounts they are reporting on Line 116 in the current filing and amounts reported in recent filings. In addition, filers could take into account general business conditions, new contracts covering the projection period, pricing trends, marketing programs, expansion plans, and other relevant information. Filers must develop good faith projections based on company procedures and

³⁹ *CPE Bundling Order*, 16 FCC Rcd 7418 at 7447-48, paras. 50-52.

⁴⁰ *See Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling, Report and Order, 21 FCC Rcd 7290, 7298, para. 22 (2006), *vacated in part*, *Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

policies. If the filer anticipates that revenues are as likely to increase as decrease, then it may copy the historic values from Line 116 to use as its projections for Line 119 or it could develop projections by trending historic values from previous quarterly filings. Filers need not make projections for Line 119 column (a).

6. Projected collected end-user interstate and international revenues

Line 120 should show the interstate and international revenues that the filer anticipates collecting from customers during the projection quarter. For this purpose “collected end-user” revenues refers to gross-billed end-user interstate and international telecommunications revenues, including any pass-through charges for federal universal service contributions, less estimated uncollectibles.⁴¹ We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. This percentage should be calculated in accordance with Generally Accepted Accounting Principles.⁴² Thus, uncollectibles should represent the portion of gross billed revenues that the contributor reasonably expects will not be collected. Filers that use the accrual method of accounting should use the percentage of billed revenues that they recognize currently as a reserve for uncollectibles in their books of accounts. Filers that use the cash method of accounting should base this percentage on a comparison of actual collections and billed revenues, with the periods chosen to allow for the average delay between when services are billed and when payments are received. The amounts shown on Line 120 should be the amounts on Line 119 reduced by the percentage of uncollectibles.

Filers will be billed based on the amounts reported on Line 120. Any revisions to these amounts must be filed within 45 calendar days. No adjustments to billings will be made during the quarter to reflect actual levels of billed service and actual collection rates. The Administrator will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.⁴³ As necessary, the administrator will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (FCC Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly projected revenues reported by a contributor are less than those reported on its annual revenue report (FCC Form 499-A), then the administrator will collect the difference from the contributor using an average of the two highest contribution factors from that year.

D. Block 4: Certification.

Line 121 – Filers may use the box in Line 121 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's

⁴¹ *Wireless Safe Harbor Order*, 13 FCC Rcd at 21258-60, paras. 11-15; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24970, para. 32.

⁴² General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications.

⁴³ See Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (*FCC Form 499-A*).

rules.⁴⁴ All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2 contact information) of the entities that file the Telecommunications Reporting Worksheet.

Lines 122 through 126 – An officer of the filer must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and complete.

- Officers of entities making consolidated filings should refer to Section III.B and must certify that they comply with the conditions listed in that section.
- An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement). Preferably, the signing officer would be a vice-president for finance, comptroller, treasurer, or a comparable officer holding a financial position. Alternatively, the officer signing the Form preferably would be the president or vice president of operations. If the filer is a sole proprietorship, the owner must sign the certification.

Capable filers must enter data, and verify, submit, and certify FCC Forms 499-A and 499-Q online via USAC's web-based data entry system, E-File.

- An electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form.
- By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form.

Visit <https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/> for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under title 18 of the United States Code.⁴⁵

Line 127 – Indicate whether this filing is an original filing or a revised filing.⁴⁶

IV. Additional Information

A. Reminders

- Filers are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for five years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. See section II-B. Each affiliate or subsidiary must show the Affiliate Filers Name on Line 105.

⁴⁴ 47 CFR § 0.459. See also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

⁴⁵ See 18 U.S.C. § 1001.

⁴⁶ See section II-E.

- To access the E-file system, go to <http://forms.universalservice.org/>.
- Provide data for all lines that apply. Show a zero for services for which the contributor had no revenues for the filing period.
- Contributors to universal service support mechanisms must make five FCC Form 499 filings each year. *See* Figure 2.
- Wherever possible, revenue information should be taken from the contributors' financial records. Filers also must provide projected revenue information on Line 119 through Line 120.
- The Worksheet must be signed by an officer of the reporting entity. An officer is a person who occupies a position specified in the corporate by laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* section II-C for filing instructions.
- Note that FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the FCC web site, at <http://forms.universalservice.org/>.

B. Contact Information

If you have questions about the Worksheet or the instructions, you may contact:

Universal Service Administrator	form499@usac.org (888) 641-8722

If you have questions regarding contribution amounts, billing procedures, or the support and cost recovery mechanisms, you may contact:

Universal Service Administrator	(888) 641-8722

- FCC -



Federal Communications Commission
Washington, D.C. 20554

October 23, 2024

DA 24-1096
In Reply Refer to:
1800B3-RDM
Released October 23, 2024

Heartland Educational Broadcasting Corporation
c/o Jorge A. Escobar
2300 N. McCullough Rd.
Avon Park, FL 33825
(sent by electronic mail)

Sturgeon Bay LifeStyle Educational Radio
c/o David Rawls
257 N. Forestville Ave.
Sturgeon Bay, WI 54235
(sent by electronic mail)

Visalia Life Education Foundation, Inc.
c/o David Gregory
11618 Ave. 400
Cutler, CA 93615
(sent by electronic mail)

Grants Pass Lifestyle Educational Radio Corporation
c/o Abe Gaio
1457 N. Pinnon Rd.
Grants Pass, OR 97526
(sent by electronic mail)

Desoto Educational Broadcasting Corporation
c/o Luis M. Garcia
PO Box 999
Arcadia, FL 34265
(sent by electronic mail)

Winwood Lifestyle Educational Radio Corporation
c/o Kristine Truax
1302 Coon St.
Rhineland, WI 54501
(sent by electronic mail)

Oxford Lifestyle Educational Radio
c/o Mike Minier
503 Country Rd. I
Oxford, WI 53952
(sent by electronic mail)

Lake Wales Educational Broadcasting Corporation
c/o Glen Phillips
61 Greenfield Ct.
Winter Haven, FL 33884
(sent by electronic mail)

Lake Placid Spanish Educational Broadcasting Corporation
c/o Carrol Ann Greer
24 E. Phoenix St.
Lake Placid, FL 33852
(sent by electronic mail)

Lake Placid Educational Broadcasting Corporation
c/o Jose Rafael Fernandez
4003 Divot Rd.
Sebring, FL 33872
(sent by electronic mail)

Sebring Educational Broadcast Corporation
c/o Victor M. Seralde
4200 Maderia Ave.
Sebring, FL 33872
(sent by electronic mail)

Triangle Access Broadcasting, Inc.
7813 Highlandview Cir.
Raleigh, NC 27613
(sent by electronic mail)

In re: **Heartland Educational Broadcasting Corporation**
New LPFM, Sebring, FL
Facility ID No. 788657
Application File No. 0000233123

Sturgeon Bay LifeStyle Educational Radio
New LPFM, Sturgeon Bay, WI
Facility ID No. 788483
Application File No. 0000233102

Visalia Life Education Foundation, Inc.
New LPFM, Visalia, CA
Facility ID No. 788732
Application File No. 0000233019

**Grants Pass Lifestyle Educational
Radio Corporation**

New LPFM, Grants Pass, OR
Facility ID No. 788675
Application File No. 0000233015

**Desoto Educational Broadcasting
Corporation**

New LPFM, Arcadia, FL
Facility ID No. 788354
Application File No. 0000232771

**Winwood Lifestyle Educational Radio
Corporation**

New LPFM, Rhinelander, WI
Facility ID No. 788242
Application File No. 0000232717

Oxford Lifestyle Educational Radio

New LPFM, Oxford, WI
Facility ID No. 788447
Application File No. 0000232519

**Lake Wales Educational Broadcasting
Corporation**

New LPFM, Lake Wales, FL
Facility ID No. 788287
Application File No. 0000232251

**Lake Placid Spanish Educational
Broadcasting Corporation**

New LPFM, Lake Placid, FL
Facility ID No. 788651
Application File No. 0000233145

**Lake Placid Educational
Broadcasting Corporation**

New LPFM, Lake Placid, FL
Facility ID No. 788291
Application File No. 0000232525

**Sebring Educational Broadcast
Corporation**

New LPFM, Sebring, FL
Facility ID No. 788300
Application File No. 0000232403

Informal Objections

Dear Applicants and Objector:

We have before us eleven applications filed by Heartland Educational Broadcasting Corporation (Heartland),¹ Sturgeon Bay LifeStyle Educational Radio (Sturgeon Bay),² Visalia Life Education Foundation, Inc. (Visalia),³ Grants Pass Lifestyle Educational Radio Corporation (Grants Pass),⁴ Desoto Educational Broadcasting Corporation (Desoto),⁵ Winwood Lifestyle Educational Radio Corporation (Winwood),⁶ Oxford Lifestyle Educational Radio (Oxford),⁷ Lake Wales Educational Broadcasting Corporation (Lake Wales),⁸ Lake Placid Spanish Educational Broadcasting Corporation (Lake Placid Spanish),⁹ Lake Placid Educational Broadcasting Corporation (Lake Placid),¹⁰ and Sebring Educational Broadcast Corporation (Sebring),¹¹ (collectively, Applicants) for construction permits for new low power FM (LPFM) stations in different communities in Florida, Wisconsin, California, and Oregon (collectively, Applications).

We also have before us three Informal Objections filed by Triangle Access Broadcasting, Inc. (Triangle), which seek the dismissal of the Applications (collectively, Objections): (1) an objection filed against the Sebring Application (Sebring Objection);¹² (2) an objection filed against the Lake Placid and Lake Placid Spanish Applications (Lake Placid Objection);¹³ and (3) an “Informal Objection and Supplement” filed against all 11 Applications (Omnibus Objection).¹⁴ For the reasons set forth below, we grant the Sebring Objection and Lake Placid Objection. We also grant the Omnibus Objection with respect to all Applications except for the Sturgeon Bay and Winwood Applications, and dismiss the

¹ Application File No. 0000233123 (filed Dec. 15, 2023) (Heartland Application).

² Application File No. 0000233102 (filed Dec. 15, 2023) (Sturgeon Bay Application).

³ Application File No. 0000233019 (filed Dec. 15, 2023) (Visalia Application).

⁴ Application File No. 0000233015 (filed Dec. 14, 2023) (Grants Pass Application).

⁵ Application File No. 0000232771 (filed Dec. 13, 2023) (Desoto Application).

⁶ Application File No. 0000232717 (filed Dec. 13, 2023) (Winwood Application).

⁷ Application File No. 0000232519 (filed Dec. 12, 2023) (Oxford Application).

⁸ Application File No. 0000232251 (filed Dec. 11, 2023) (Lake Wales Application).

⁹ Application File No. 0000233145 (filed Dec. 15, 2023) (Lake Placid Spanish Application).

¹⁰ Application File No. 0000232525 (filed Dec. 12, 2023) (Lake Placid Application).

¹¹ Application File No. 0000232403 (filed Dec. 11, 2023) (Sebring Application).

¹² Pleading File No. 0000238131 (filed Feb. 2, 2024). The Sebring Objection also seeks dismissal of a second application, that of Ignite Radio, Inc., which was voluntarily withdrawn after the objection was filed. *See* Application File No. 0000232388 (filed Dec. 11, 2023, withdrawn Feb. 16, 2024) (Ignite Application).

¹³ Pleading File Nos. 0000238051 (filed Feb. 2, 2024) (objection to Lake Placid Application) and 000238052 (filed Feb. 2, 2024) (objection to Lake Placid Spanish Application).

¹⁴ Pleading File Nos. 0000238346 (filed Feb. 6, 2024) (objection to Heartland Application); 0000238350 (filed Feb. 6, 2024) (objection to Sturgeon Bay Application); 0000238352 (filed Feb. 6, 2024) (objection to Visalia Application); 0000238353 (filed Feb. 6, 2024) (objection to Grants Pass Application); 0000238344 (filed Feb. 6, 2024) (objection to Desoto Application); 0000238351 (filed Feb. 6, 2024) (objection to Winwood Application); 0000238349 (filed Feb. 6, 2024) (objection to Oxford Application); 0000238345 (filed Feb. 6, 2024) (objection to Lake Wales Application); 0000238348 (Supplement to Lake Placid Spanish Objection, filed Feb. 6, 2024); 0000238347 (Supplement to Lake Placid Objection, filed Feb. 6, 2024); 0000238343 (Supplement to Sebring Objection, filed Feb. 6, 2024). None of the Applicants filed Oppositions to any of the Objections.

remaining nine Applications. We hold the Sturgeon Bay and Winwood Applications in abeyance and defer consideration of the Omnibus Objection with respect to these two applications.

Background. The Applications were filed during the 2023 LPFM Filing Window.¹⁵ In the Objections, Triangle argues that the Applicants are commonly controlled, and therefore granting the Applications would violate the Commission’s rules (Rules) against multiple ownership of LPFM stations.¹⁶ Triangle points out that each applicant’s Articles of Incorporation specify that the applicant’s directors are appointed by an entity named “Heartland Inc.”¹⁷ Triangle argues that while there is no known corporation in Florida named “Heartland Inc.,” “the Applications trace back to Heartland Inc. as a common owner, whether or not that entity can be identified.”¹⁸

On March 11, 2024, Michael Palsgrove, who is the registered agent for each of the Applicants, contacted Media Bureau (Bureau) staff by email. The staff advised Palsgrove that, because the applications are contested, the staff could not discuss the merits of the proceeding and that any pleadings addressing the merits of the objections must be filed through LMS and served on the objector.¹⁹ To date, no opposition has been filed.

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),²⁰ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²¹

¹⁵ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, 38 FCC Rcd 6660 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

¹⁶ See 47 CFR § 73.855(a) (“No authorization for an LPFM station shall be granted 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.”)

¹⁷ See Sebring Objection at 2; Omnibus Objection at 4.

¹⁸ See *id.* at 4-5. Triangle also notes that in the case of the Heartland Application, the name on the application (“Heartland Educational Broadcasting Corporation”) does not match the name of the organization on the nonprofit documentation submitted with the application (“Heartland Educational Broadcast Corporation”). *Id.* at 4. Given our dismissal of the Heartland Application, we need not address this issue. Additionally, the Sebring Objection argues that one of the parties to the Sebring Application, Luis Camps, is also a party to the Ignite Application, and both applications should be dismissed. Sebring Objection at 1-2. Because the Ignite Application was withdrawn, this issue is now moot. See *supra* note 12. Finally, the Lake Placid Objection argues that the Bureau should reject a recusal pledge included in the Lake Placid Spanish Application. Lake Placid Objection at 2; see also Lake Placid Spanish Application at Attach. “Declaration of Reclusion.pdf [sic]”. Because of our dismissal of the Lake Placid and Lake Placid Spanish Applications, we need not address this issue.

¹⁹ Email from Alexander Sanjenis, Audio Division, FCC Media Bureau to Michael Patt Palsgrove (Mar. 18, 2024, 15:28 EST).

²⁰ 47 U.S.C. § 309(d).

²¹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60

Procedural Matter. The Bureau does not review the merits of any informal objection until an application has been accepted for filing.²² As Triangle notes, two of the applications—those of Sturgeon Bay and Winwood—have not yet been accepted for filing because those two applications were identified as mutually exclusive with other applications filed in the 2023 LPFM Window, and the Commission has not identified either application as a tentative selectee in their groups.²³ Because they are not tentative selectees in their groups, we will not analyze the objection to these two applications unless they become tentative selectees. In keeping with our practice, and with the explicit warning in the *Procedures Public Notice* that we would not consider premature objections,²⁴ we will hold these two applications in abeyance.²⁵

Heartland Inc. Real Party In Interest. Section 73.855(a) of the Rules prohibits a party from holding an attributable interest in more than one LPFM authorization.²⁶ The Objections make a *prima facie* case that the Applicants are not independent entities, but are in fact all commonly controlled by Heartland Inc.²⁷ and that Heartland Inc. is the real party in interest behind each of the Applications.²⁸ The Bureau has taken official notice of each applicant’s Articles of Incorporation,²⁹ which are publicly

RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²² See, e.g., *Media Bureau Provides Guidance on the Processing of Schedule 318 Applications filed in the LPFM Window*, Public Notice, DA 24-92 at 4-5 (MB Feb. 1, 2024) (citing 47 CFR § 73.3587).

²³ Omnibus Objection at 3; see also *Commission Identifies Tentative Selectees in 93 Groups of Mutually Exclusive Applications Submitted in the December 2023 LPFM Window*, Public Notice, FCC 24-113 (Oct. 16, 2024); *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the December 2023, LPFM Filing Window; Opens Windows to Accept Settlements and Technical Amendments*, Public Notice, DA 24-256 (MB Mar. 15, 2024).

²⁴ *Procedures Public Notice*, 38 FCC Rcd at 6671 (“the Bureau will not review and consider petitions to deny, or any objections, filed prior to the designated 30-day petition to deny period.”).

²⁵ While the Sturgeon Bay and Winwood applications are held in abeyance pending the resolution of the relevant mutually exclusive groups, we will not consider the Omnibus Objection to the extent it seeks dismissal of those applications.

²⁶ 47 CFR § 73.855(a); see also 47 CFR § 73.7000 (defining attributable interest as “an interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555.”).

²⁷ See *Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248 (2001), *aff’d sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003). In assessing the locus of control, the Commission examines who establishes an entity’s basic operating policies with respect to programming, personnel, and finances. See *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (1995), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997).

²⁸ In a real party in interest inquiry, the focus is whether a third person has an undisclosed ownership interest in an application or will be in a position to actually or potentially control the applicant. See *Georgia Public Telecomm. Comm.*, Memorandum Opinion and Order, 7 FCC Rcd 7996, 7998 (1992), *citing Astroline Commc’ns. Co. v. FCC*, 857 F.2d 1556, 1564 (D.C. Cir. 1998); *KOWL, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 962 (1974) (same, *citing Creek County Broadcasting Co.*, 31 FCC 2d 462, 22 RR 2d 891 (1971) and *Sumiton Broadcasting Co.*, 15 FCC 2d 400, 14 RR 2d 1000 (1968)).

²⁹ The Commission may take official notice of government records. See *Blues and Gospel Heritage Ass’n*, Letter Order, 25 FCC Rcd 8472, 8474 n.16 (MB 2010) (staff takes official notice of Mississippi state corporate records);

accessible on the Florida Secretary of State website.³⁰ The Articles of Incorporation each explicitly grant “Heartland Inc.” the power to appoint each applicant’s directors.³¹ Because it has the power to appoint each applicant’s directors, Heartland Inc. is in a position to ultimately control each applicant.³² The Applicants have not submitted any evidence to refute the Objections’ claim. Accordingly, based on the evidence, we find that Heartland Inc. commonly controls all the Applicants, and therefore held an attributable interest in each Application at the time of filing.³³

Based on this record, we conclude that granting the Applications would violate section 73.855(a) of the Rules, which prohibits a party from holding an attributable interest in more than one LPFM authorization.³⁴ Therefore, we grant the Objections, and dismiss the Applications to the extent indicated herein.

Conclusion/Action. Accordingly, **IT IS ORDERED**, that the dismissal of each application dismissed in this letter shall be deemed a distinct and separate decision for purposes of petitions for reconsideration, and reconsideration by the Commission or Bureau on its own motion, applications for review and review on the Commission’s own motion, and appeals.³⁵ If any dismissal in this letter is declared invalid for any reason, the remaining dismissals shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

IT IS FURTHER ORDERED that the Informal Objection filed on February 2, 2024 (Pleading File No. 0000238131 (objection to Sebring Application)), by Triangle Access Broadcasting, Inc. **IS GRANTED**.

IT IS FURTHER ORDERED that the Informal Objection filed on February 2, 2024 (Pleading File Nos. 0000238052 (objection to Lake Placid Spanish Application); 0000238051 (objection to Lake Placid Application)), by Triangle Access Broadcasting, Inc. **IS GRANTED**.

Malin Christian Church, Inc., Letter Order, 25 FCC Rcd 915, 916 (MB 2010) (taking official notice of state records, state court decision, and letter from Bureau of Land Management).

³⁰ See Florida Division of Corporations, *Records Search*, <https://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (last visited Oct. 22, 2024).

³¹ See, e.g., Sebring Educational Broadcast Corporation, Electronic Articles of Incorporation, Article IV (Nov. 28, 2023), <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2023%5C1129%5C20518052.tif&documentNumber=N23000014255> (“The manner in which directors are elected or appointed is: APPOINTED BY HEARTLAND INC.”). The Articles of Incorporation for all eleven of the above-captioned applicants contain identical language.

³² See, e.g., *Helpline*, Letter Order, 23 FCC Rcd 12665, 12671 (2008) (ability of one entity to appoint directors of another is a factor in examining control); *Gali Communications*, Decision of Administrative Law Judge, 2 FCC Rcd 6967 (1987) (finding ability to appoint officers and directors of corporation is tantamount to control of corporation).

³³ See Instructions to FCC Form 2100, Schedule 318, Party to the Application Section. See also 47 CFR § 73.858.

³⁴ 47 CFR § 73.855(a). We note that because the Applicants are commonly controlled, and they were required to adhere to the one LPFM application filing limit, the Applications also violate the section 73.3518 prohibition on inconsistent or conflicting applications. See 47 CFR § 73.3518; *Procedures Public Notice*, 38 FCC Rcd at 6664 (explaining that nonprofit educational organizations may not file more than one application in the window and any additional applications will be treated as a “conflicting” application and dismissed pursuant to section 73.3518); *Hispanic Broadcasting Institute*, Memorandum Opinion and Order, 30 FCC Rcd 10560 (2015).

³⁵ See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004.

IT IS FURTHER ORDERED that the Informal Objection and Supplement filed on February 6, 2024 (Pleading File Nos. 0000238346 (objection to Heartland Application), 0000238352 (objection to Visalia Application), 0000238353 (objection to Grants Pass Application), 0000238344 (objection to Desoto Application), 0000238349 (objection to Oxford Application), 0000238345 (objection to Lake Wales Application), 0000238343 (Supplement to objection to Sebring Application), 0000238348 (Supplement to objection to Lake Placid Spanish Application), 0000238347 (Supplement to objection to Lake Placid Application)), by Triangle Access Broadcasting, Inc. **IS GRANTED** to the extent indicated herein.

IT IS FURTHER ORDERED that the application of Heartland Educational Broadcasting Corporation (Application File No. 0000233123) for a construction permit for a new LPFM station in Sebring, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Visalia Life Education Foundation, Inc. (Application File No. 0000233019) for a construction permit for a new LPFM station in Visalia, California **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Grants Pass Lifestyle Educational Radio Corporation (Application File No. 0000233015) for a construction permit for a new LPFM station in Grants Pass, Oregon **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Desoto Educational Broadcasting Corporation (Application File No. 0000232771) for a construction permit for a new LPFM station in Arcadia, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Oxford Lifestyle Educational Radio (Application File No. 0000232519) for a construction permit for a new LPFM station in Oxford, Wisconsin **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Lake Wales Educational Broadcasting Corporation (Application File No. 0000232251) for a construction permit for a new LPFM station in Lake Wales, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Lake Placid Spanish Educational Broadcasting Corporation (Application File No. 0000233145) for a construction permit for a new LPFM station in Lake Placid, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Lake Placid Educational Broadcasting Corporation (Application File No. 0000232525) for a construction permit for a new LPFM station in Lake Placid, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Sebring Educational Broadcast Corporation (Application File No. 0000232403) for a construction permit for a new LPFM station in Sebring, Florida **IS DISMISSED**.

IT IS FURTHER ORDERED that the application of Sturgeon Bay Lifestyle Educational Radio (Application File No. 0000233102) for a construction permit for a new LPFM station in Sturgeon Bay, Wisconsin **IS HELD IN ABEYANCE**.

IT IS FURTHER ORDERED that the application of Winwood Lifestyle Educational Radio Corporation (Application File No. 0000232717) for a construction permit for a new LPFM station in Rhineland, Wisconsin **IS HELD IN ABEYANCE**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
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DA 24-1097

Released: October 23, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON PIPER NETWORKS INC. REQUEST FOR MODIFICATION OF WAIVER OF PART 15 RULES FOR ENHANCED TRANSIT LOCATION SYSTEM

ET Docket No. 19-246

Comment Date: November 7, 2024
Reply Comment Date: November 22, 2024

On August 23, 2024, Piper Networks, Inc. (Piper) filed a request for a modification of an existing waiver of the part 15 of the Commission's rules to permit Piper to expand the area of operations for its enhanced transit location system (ETLS) train positioning system for subway and commuter trains in urban and outdoor areas.¹

We previously granted Piper a waiver of Sections 15.519(a) and 15.519(a)(2) of the Commission's Rules to allow it to deploy its ETLS within the greater New York City area and Harris County, Texas areas in the 4243-4743 MHz frequency band.² Piper now seeks to deploy ELTS operations, under the same waiver terms, in the metropolitan Boston, Massachusetts area.³ It states that the planned new deployment "will be technically identical to the ETLS deployed in the currently authorized geographies," and claims that its deployments under the existing waiver "ha[ve] not resulted in any reported interference issues."⁴

The Commission's Office of Engineering and Technology (OET) seeks comment on Piper's waiver modification request. Parties should file all comments and reply comments in ET Docket 19-246, which, for *ex parte* purposes, is designated as a "permit-but-disclose" proceeding in accordance with Section 1.1200(a) of the Commission's rules and is subject to the requirements under Section 1.1206(b).

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.149, interested parties may file comments in ET Docket No. 24-209 on or before the date indicated on the first page of this document and should reference this public notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹ Request by Piper Networks, Inc. for Modification of Waiver Grant, filed August 23, 2024 in ET Docket No 19-246 (Piper Waiver Modification Request).

² *Piper Networks Inc. Request for Waiver of Section 15.519(a) and Section 15.519(a)(2) of the Commission's Rules*, Order, 35 FCC Rcd 12912, ET Docket No. 19-246 (OET 2019).

³ Piper Waiver Modification Request.

⁴ *Id.*, at 3.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by First-Class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - 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 addressed to Secretary, Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

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

Parties should also send a copy of their filings to Syed Hasan, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20002, or by e-mail to syed.hasan@fcc.gov.

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

By the Chief, Office of Engineering and Technology.

FCC

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	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

ORDER DENYING STAY PETITION

Adopted: October 23, 2024

Released: October 23, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On October 16, 2024, the National Sheriffs' Association filed a petition requesting that the Commission stay its Report and Order in the above-captioned proceedings pending judicial review.¹ For the reasons discussed below, we deny the National Sheriffs' Association'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 adopted permanent per-minute rate caps for all incarcerated people's audio communications services, and established, for the first time, 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

¹ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, 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 National Sheriffs' Association, Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375 (filed Oct. 16, 2024) (National Sheriffs' Association Stay Petition). The Wright Petitioners, United Church of Christ Media Justice Ministry, Pennsylvania Prison Society, and Stephen A. Raher (collectively, the Public Interest Parties) filed an opposition to the National Sheriffs' Association Stay Petition. See Opposition to the National Sheriffs' Association's Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 22, 2024) (Public Interest Parties Opposition).

² Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2022) (Martha Wright-Reed Act or Act).

³ 47 U.S.C. § 276(b)(1)(A).

⁴ See, e.g., *2024 IPCS Order* at 60, para. 119.

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 expressly permitted in the Martha Wright-Reed Act.⁵ In setting the new rate caps, the Commission considered cost and other data submitted by IPCS providers and the National Sheriffs' Association.⁶

3. In the *2024 IPCS Order*, the Commission also ended IPCS providers' long-standing practice of paying site commissions 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 October 2, 2024, and October 15, 2024, respectively, the Wireline Competition Bureau (WCB or the Bureau) issued orders denying Securus Technologies, LLC's (Securus's) and Pay Tel Communications, Inc.'s (Pay Tel's) petitions for administrative stays of the *2024 IPCS Order*.¹⁰ In its October 16, 2024, petition, the National Sheriffs' Association acknowledges that its petition overlaps, to a certain extent, with Securus's and Pay Tel's petitions.¹¹ The National Sheriffs' Association asserts, however, that as an association "represent[ing] over 6,000 Sheriffs nationwide,"¹² its position differs materially from those of Securus and Pay Tel, which are IPCS providers.¹³ The National Sheriffs' Association contends that a stay pending judicial review is warranted because alleged legal and factual errors in the *2024 IPCS Order* make it likely that the National Sheriffs' Association will prevail on the

⁵ Martha Wright-Reed Act § 3(b)(b)(1); *see also, e.g., 2024 IPCS Order* 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 2024 IPCS Order* at 102-04, paras. 184-85. *See also id.* at 94-100, paras. 170-79.

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. 427-71 (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. The National Sheriffs' Association Petition seeks a stay only of the *2024 IPCS Order*. National Sheriffs' Association Stay Petition at iii.

¹⁰ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order Denying Stay Petition, DA 24-1074 (WCB rel. October 15, 2024) (*Pay Tel Stay Denial Order*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order Denying Stay Petition, DA 24-1035 (WCB rel. October 2, 2024) (*Securus Stay Denial Order*).

¹¹ National Sheriffs' Association Stay Petition at 3.

¹² *Id.* at 2.

¹³ *Id.* at 3.

merits of any appeal, because the National Sheriffs' Association will suffer irreparable harm absent a stay, and because "the balance of harms and the public interest support a stay."¹⁴

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 favor grant of the stay.¹⁵ 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.¹⁶ The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.¹⁷ The National Sheriffs' Association has failed to meet that burden.¹⁸

A. The National Sheriffs' Association 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 it is likely to succeed;¹⁹ a "mere possibility of relief" is insufficient.²⁰ 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."²¹ The National Sheriffs' Association principally argues that, in the *2024 IPCS Order*, the Commission "made several critical legal errors in interpreting key provisions" of the Martha Wright-Reed Act; "failed to adequately consider the cost[s] of safety and security measures – both independently and in the context of the size of facilities – in setting" rate caps; and "failed to follow the [Martha Wright-Reed Act's] explicit command not to construe the legislation to prohibit safety and security measures related to IPCS."²²

7. In making these and the other arguments regarding its probability of success on the merits, the National Sheriffs' Association ignores or mischaracterizes key aspects of the comprehensive compensation plan for IPCS that the Commission adopted in the *2024 IPCS Order*.²³ Indeed, the National Sheriffs' Association's arguments on the merits of that *Order* are largely grounded in erroneous assertions that the Commission failed to consider the costs of certain safety and security measures in setting IPCS rate caps and deemed those costs "unrecoverable" to the extent they are incurred by correctional

¹⁴ *Id.* at iii-iv.

¹⁵ 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)).

¹⁶ *Nken*, 556 U.S. at 427 (internal citations omitted); *Securus Stay Denial Order* at para. 6.

¹⁷ *Pay Tel Stay Denial Order* at para. 6; *Securus Stay Denial Order* at para. 6; *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8 (citing *Nken*, 556 U.S. at 433-34).

¹⁸ Although the National Sheriffs' Association challenges only the portions of the *2024 IPCS Order* that, in its words, prohibit "cost recovery for safety and security measures associated with" IPCS, it requests that we stay that *Order* in its entirety. National Sheriffs' Association Stay Petition at iii, 1. The National Sheriffs' Association, however, makes no attempt to show how its limited challenge to the *Order* requires a stay of the *Order* as a whole. Its petition therefore falls far short of meeting the stay criteria. See *Pay Tel Stay Denial Order*, at 3 n.16.

¹⁹ *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

²⁰ *Id.* at 434 (internal quotation marks omitted).

²¹ *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

²² National Sheriffs' Association Stay Petition at iii.

²³ *Id.* at 4-7.

institutions.²⁴ However, as discussed in more detail below, the Commission fully considered “all the arguably recoverable costs in the record, including costs associated with safety and security measures” in setting rate caps.²⁵ And “[t]o facilitate recovery of any used and useful costs” that correctional facilities may incur in the provision of IPCS, the Commission “permit[ted] IPCS providers to reimburse correctional facilities for the used and useful costs they may incur” in the provision of IPCS.²⁶

8. *Treatment of Safety and Security Costs.* Section 3(b)(2) of the Martha Wright-Reed Act directs that, in “determining just and reasonable rates,” the Commission “shall consider costs associated with any safety and security measures necessary to provide” IPCS.²⁷ The National Sheriffs’ Association argues that “the Commission failed to properly implement” this statutory provision in several respects,²⁸ each of which the *2024 IPCS Order* addressed. First, the National Sheriffs’ Association argues that the Commission did not “adequately consider” the costs of safety and security measures “independently.”²⁹ The National Sheriffs’ Association’s argument in this regard is predicated on a disagreement with the Commission’s interpretation of the Martha Wright-Reed Act’s directive that the Commission “shall consider” safety and security measure costs in its IPCS ratemaking.³⁰ According to the National Sheriffs’ Association, “[b]y deeming all but three ministerial safety and security measures – call blocking, three-way call prevention, and approved-call lists – unrecoverable, the Commission removed from consideration the costs of all other safety and security measures from its rates.”³¹

9. The National Sheriffs’ Association misconstrues the Commission’s evaluation of safety and security costs in the *2024 IPCS Order*, which “flows from the statutory text and context, and represents a continuation of the ratemaking role the Commission long has played in this context (and others).”³² Regarding the statutory text, the Commission “conclude[d] that the requirement that [the Commission] ‘consider’ the costs of safety and security measures means that [the Commission] must ‘reach . . . express and reasoned conclusion[s]’ regarding such costs—as relevant here, as part of the process of determining just and reasonable rates for IPCS.”³³ The Commission also explained that “[c]onsistent with prior interpretations of similar statutory language” the Commission “do[es] not read section 3(b)(2) [of the Martha Reed-Wright Act] . . . as a directive mandating the recovery of the costs of all safety and security measures identified by providers or facilities; or as inherently requiring the Commission ‘to give any specific weight’ to such costs as a statutory matter.”³⁴ Instead, “the text of that provision merely requires [the Commission] to examine available evidence regarding ‘costs associated with any safety and security measures necessary to provide’ IPCS along with the various other cost claims [the Commission] review[s] as part of [its] overall approach to ensuring just and reasonable rates and

²⁴ *Id.* at 5.

²⁵ *2024 IPCS Order* at 208, para. 389.

²⁶ *Id.* at 90-91, para. 163.

²⁷ Martha Wright-Reed Act § 3(b)(2).

²⁸ National Sheriffs’ Association Stay Petition at 4.

²⁹ *Id.* at 4.

³⁰ Martha Wright-Reed Act § 3(b)(2).

³¹ National Sheriffs’ Association Stay Petition at 5.

³² *2024 IPCS Order* at 189, para. 361.

³³ *Id.* at 186-87, para. 356 (quoting *Time Warner Ent. Co. v. FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995)). *See also* Public Interest Parties Opposition at 4.

³⁴ *Id.* at 187, para. 356 (quoting *Time Warner Ent. Co. v. FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995)). *See also* Public Interest Parties Opposition at 3 (noting that “Congress deferred to the Commission’s expertise and discretion, and plainly did not obligate the Commission to pass on any such costs it shall consider through the rate caps”).

charges for IPCS that also yield fair compensation for providers.”³⁵ To do so, “[the Commission] employ[s] the ‘used and useful’ framework to determine what costs and expenses can be recovered through just and reasonable IPCS rates.”³⁶ 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.”³⁷

10. The Commission thus applied the used and useful framework 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.”³⁸ 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.’”³⁹ Thus, it is simply inaccurate to say that the Commission “removed from consideration” certain safety and security measures.⁴⁰ As the *2024 IPCS Order* makes clear, the Commission evaluated all of the cost data before it using “bedrock ratemaking precedent.”⁴¹

11. Second, the National Sheriffs’ Association argues that the Commission’s interpretation of the requirement in section 3(b)(2) of the Martha Wright-Reed Act that the Commission “shall consider” safety and security costs necessary to provide IPCS “ignores the regulatory history of the matter here.”⁴² Quite the opposite. In the *2024 IPCS Order*, the Commission found that its “understanding of section

³⁵ *Id.*

³⁶ *Id.* at 195, para. 370. In several places in its petition, the National Sheriffs’ Association asserts that certain safety and security costs are “unrecoverable” or that the Commission “prohibits cost recovery for most safety and security measures.” *See, e.g.,* National Sheriffs’ Association Stay Petition at 5-6. Such characterizations are inaccurate insofar as they suggest that there is no possibility of recovery for certain costs. The Commission made no such determinations. Rather, it had to determine, through thorough application of “the Commission’s traditional ratemaking standard, the used and useful standard . . . whether any costs of safety and security measures are properly recoverable through regulated rates.” *2024 IPCS Order* at 180, para. 339. And, “[t]o facilitate recovery of any used and useful costs . . . that correctional facilities incur” the Commission “permit[ted] IPCS providers to reimburse correctional facilities for the used and useful costs they may incur.” *Id.* at 90-01, para. 163.

³⁷ *2024 IPCS Order* at 195, para. 370.

³⁸ *Id.* at 208, para. 389; *Securus Stay Denial Order* at 7, para. 14. *See also* Public Interest Parties Opposition at 3 (noting that the Commission followed the “statutory directive” of the Martha Wright-Reed Act “by evaluating the evidence before it regarding” safety and security costs “and making a reasoned judgment about the extent to which such costs should be included in the rates”).

³⁹ *2024 IPCS Order* 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)).

⁴⁰ In fact, the *2024 IPCS Order* includes separate sections evaluating each of the seven categories of safety and security measures. *See 2024 IPCS Order* at 205-20, paras. 388-407.

⁴¹ *Id.* at 209, para. 390. We note that the National Sheriffs’ Association claims that the Commission denied recovery for “all but three” safety and security measures but leaves out the fact that the Commission permitted recovery for costs associated with CALEA compliance. National Sheriffs’ Association Stay Petition at 5; *see 2024 IPCS Order* at 209-11, paras. 391-93. Additionally, while the National Sheriffs’ Association characterizes those safety and security services the Commission concluded were used and useful as “ministerial,” the Commission recognized that “[b]y incorporating the costs reported for these service categories into [the] lower bounds” of its zones of reasonableness, it “retain[ed] a significant portion of providers’ reported safety and security costs, i.e., \$180 million.” National Sheriffs’ Association Stay Petition at 5; *2024 IPCS Order* at 111, para. 200; *Pay Tel Stay Denial Order* at 7, para. 16.

⁴² National Sheriffs’ Association Stay Petition at 5.

3(b)(2) harmonizes it with the broader regulatory history.”⁴³ In particular, the Commission explained that “[c]onsidering costs associated with any safety and security measures necessary to provide IPCS as part of [the Commission’s] longstanding used and useful analysis reflects a continuation of the sort of analyses the Commission has long undertaken in the IPCS context,” including in the *2013 ICS Order* and the *2021 ICS Order*.⁴⁴ The Commission recognized that previously its “inquiry ha[d] been to identify costs associated with safety and security measures that have a sufficient nexus to IPCS to justify recovery of the relevant costs or expenses through IPCS rates.”⁴⁵ Insofar as the Commission did not previously, before the *2024 IPCS Order*, determine that specified services designated as “security related” were not used and useful to the provision of IPCS, that is only because the “record then before it made” definitive analysis on that point “impossible.”⁴⁶ The National Sheriffs’ Association ignores these portions of the *2024 IPCS Order* in asserting that the Commission’s treatment of safety and security measures somehow “ignore[s]” the regulatory history.⁴⁷

12. In any event, the National Sheriffs’ Association’s invocation of legislative history appears to be meant to support its argument that “the most reasonable interpretation of Congress’ intent is that the Commission should ensure cost recovery for safety and security measures associated with IPCS.”⁴⁸ Rather than grappling with the language of the Martha Reed-Wright Act or the Commission’s

⁴³ *2024 IPCS Order* at 188, para. 359.

⁴⁴ *Id.*

⁴⁵ *Id.* at 188, para. 360. *See also id.* (noting that “[t]he Commission’s evaluation of the nexus between safety and security measures and the provision of IPCS evolved over time as the industry’s use of such measures has increased”).

⁴⁶ *Id.*

⁴⁷ Relying on the D.C. Circuit’s opinion in *Global Tel* Link v. FCC*, 866 F.3d 397, 413 (D.C. Cir. 2017) (*GTL* or *GTL v. FCC*), the National Sheriffs’ Association also suggests that “[t]he IPCS market and the courts have historically treated safety and security measures as a cost of doing business with corrections facilities” and that “[t]he Commission has previously attempted to eliminate cost recovery for particular safety and security measures, among other costs related to the provision of IPCS, and that effort was rejected.” National Sheriffs’ Association Stay Petition at 5. This misconstrues the Commission’s prior actions and the *GTL* case. In the order under review in the *GTL* case, the Commission had excluded costs associated with site commission payments from its ratemaking calculus. *See GTL v. FCC*, 866 F.3d at 413. The D.C. Circuit found this exclusion to be “implausible” based on its understanding at that time that “site commissions obviously are costs of doing business incurred by ICS providers.” *Id.* To the extent the National Sheriffs’ Association means to suggest that site commissions may have, at one time, funded various safety and security measures, the Commission acknowledged that linkage in the *2024 IPCS Order*. *See 2024 IPCS Order* at 137, para. 251. But it is inaccurate to say that the Commission had previously attempted to eliminate cost recovery for certain safety and security measures. And, in any event, in the *2024 IPCS Order*, the Commission decoupled site commission payments (which the Commission prohibited), from IPCS provider reimbursement of correctional facility costs, including safety and security costs, that are used and useful in the provision of IPCS (which the Commission permitted). *See id.* at 131, para. 242. “By precluding providers from paying site commissions altogether,” the Commission “eliminate[d] 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.” *Id.* at 165, para. 307.

⁴⁸ National Sheriffs’ Association Petition at 5-6. The National Sheriffs’ Association selectively relies on “a statement on a previous version” of the Martha Wright-Reed Act that it claims demonstrates Congress’ intent. National Sheriffs’ Association Stay Petition at 6 and Attach. A. Putting aside the fact this legislative statement addresses, as the National Sheriffs’ Association concedes, a version of the Martha Wright-Reed Act that was never enacted, the statement’s language does not help the National Sheriffs’ Association. In particular, the statement explains that “[n]othing in the bill undermines law enforcements’ [sic] ability to recoup safety and security costs. In fact, applying the just and reasonable standard *preserves* sheriffs’ ability to recoup those costs.” National Sheriffs’ Association Stay Petition Attach. A (emphasis in original). In the *2024 IPCS Order*, the Commission determined that because Congress had “imported section 201(b)’s ‘just and reasonable’ standard into section 276(b)(1)(A) . . . the standard the Commission has used to determine just and reasonable rates under section 201(b) should also apply (continued....)

interpretation of it in the *2024 IPCS Order*, the National Sheriffs' Association simply asserts that the Commission "substituted its own judgment as to the necessity and 'used-and-usefulness' of safety and security measures," the result of which, it claims, is that "the costs of most safety and security measures are not accounted for and effectively prohibited" in violation of section 4 of the Martha Wright-Reed Act.⁴⁹ We disagree.

13. As an initial matter, the Commission found that the National Sheriffs' Association's preferred reading of section 3(b)(2) of the Martha Wright-Reed Act was at odds with the "best reading of" that provision.⁵⁰ The Commission explained that "[s]ome commenters misunderstand section 3(b)(2) and argue that all safety and security measures a facility identifies are automatically necessary and recoverable through regulated rates."⁵¹ "Although section 3(b)(2) requires the Commission to 'consider' costs associated with safety and security measures necessary in providing IPCS when determining just and reasonable rates" the Commission concluded that "commenters d[id] not persuasively demonstrate that, as a textual matter, this requires more than evaluating the available information in the record and reaching a reasoned decision."⁵² As the Commission explained: "[c]ontrary arguments would require [the Commission] to interpret section 3(b)(2) as establishing an anomalous approach to ratemaking under the Communications Act that would, at least with respect to the costs of safety and security measures, effectively eliminate the role Congress intended the Commission to play in determining just and reasonable rates and, instead, place that role in the hand of the providers and facilities."⁵³

14. To the extent that the National Sheriffs' Association, by its reference to "used-and-usefulness," complains that the Commission's application of the used and useful framework to the costs of safety and security measures resulted in certain costs that "are not accounted for," this argument does not undermine the Commission's reading of the statute. "[E]xcluding 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.'"⁵⁴ 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

(Continued from previous page)

to [the Commission's] ratemaking under section 276(b)(1)(A)." *2024 IPCS Order* at 25, para. 41. That standard—the used and useful standard—is used by the Commission to assess "the costs that should either be included or excluded from [its] rate cap calculations to ensure just and reasonable rates and charges for IPCS." *Id.* at 25, para. 42. Thus, the application of the just and reasonable standard means that some costs will naturally be excluded from the Commission's ratemaking calculus to the extent they are not used and useful. Accordingly, the legislative statement upon which the National Sheriffs' Association relies does not advance its argument because the statement is accurate: the application of the just and reasonable standard will afford sheriffs the opportunity to recover safety and security costs to the extent they are used and useful. Nowhere does it suggest that costs associated with *any* safety and security measure a facility decides it wants are recoverable through IPCS rates.

⁴⁹ National Sheriffs' Association Stay Petition at 6; Martha Wright-Reed Act § 4 (stating, in relevant part, that "[n]othing in this Act shall be construed . . . to prohibit the implementation of any safety and security measures related to" IPCS).

⁵⁰ *2024 IPCS Order* at 189, para. 362. *See also* Public Interest Parties Opposition at 4 (noting the "complete lack of textual support" for the National Sheriffs' Association's interpretation).

⁵¹ *Id.* (noting that the National Sheriffs' Association made such an argument).

⁵² *Id.* *See also* Public Interest Parties Opposition at 4 (explaining that "Congress could have directed the Commission to 'include' or 'permit the recovery of' certain safety and security costs had it intended the Commission to do so" but "[i]t did not").

⁵³ *Id.* at 190, para. 362.

⁵⁴ *Securus Stay Denial Order* at para. 9 (quoting 47 U.S.C. § 276(b)(1)(A)).

calculations to ensure just and reasonable rates and charges for IPCS.”⁵⁵ 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.”⁵⁶ The extent to which certain safety and security costs and expenses were excluded from the Commission’s rate cap calculations reflects the Commission’s application of the longstanding used and useful framework to determine which costs should not be recoverable through IPCS rates.

15. We also disagree that the Commission’s evaluation and treatment of safety and security costs in the *2024 IPCS Order* conflicts with section 4 of the Martha Wright-Reed Act. In the *2024 IPCS Order*, the Commission explained that section 4 “makes clear that, in directing the Commission to develop a compensation plan to ensure just and reasonable IPCS rates and charges, Congress did not intend to prohibit correctional institutions from implementing policies that, in their judgment, are needed to preserve safety and security.”⁵⁷ Consistent with that interpretation, the Commission read the relevant language in section 4 as “precluding [the Commission] from construing any provision of that Act as making such a prohibition regarding the implementation of any safety and security measures at any federal, state, or local correctional institution.”⁵⁸ The Commission explained that such an interpretation was “the best interpretation of the Martha Wright-Reed Act” and would “ensure a meaningful role for both section 3(b)(2) and section 4” of that Act.⁵⁹

16. The Commission then rejected the argument advanced by the National Sheriffs’ Association that the disallowance of costs for certain safety and security measures “effectively prohibits” the measures from being implemented. The Commission explained that “as a statutory matter . . . in other contexts where Congress wanted to prevent not only the prohibition of certain conduct, but even things that effectively prohibit certain conduct, it has done so explicitly.”⁶⁰ The Commission was thus not “persuaded to infer a *de facto* prohibition—a prohibition in fact—from the language of section 4 as the National Sheriffs’ Association [had] suggest[ed].”⁶¹ The National Sheriffs’ Association now offers little more than bare assertions that the Commission’s actions in connection with safety and security measures conflict with section 4. Those assertions do not in any way undermine the Commission’s extensive analysis in the *2024 IPCS Order* to the contrary.

17. Third, the National Sheriffs’ Association argues that the Commission’s treatment of correctional facility costs in the upper bounds of its zones of reasonableness shows that the Commission “effectively failed to consider the differences in costs by small and medium facilities, as required by [s]ection 3(b)(2) of the” Martha Wright-Reed Act.⁶² We again disagree. To begin with, the National Sheriffs’ Association ignores the fact that the Commission’s rate cap structure was designed to capture the differences in costs across facilities of all types and sizes, to the extent the data permitted. Thus, in setting IPCS rate caps, the Commission adopted “a rate cap structure that first distinguishes between two

⁵⁵ *2024 IPCS Order* at 25, para. 42.

⁵⁶ *Id.* at 186, para. 355.

⁵⁷ *Id.* at 30, para. 51.

⁵⁸ *Id.* at 30-31, para. 51.

⁵⁹ *Id.* at 31, para. 53.

⁶⁰ *Id.* at 33, para. 58 and n.201 (providing examples).

⁶¹ *Id.* at 33, para. 58. See also Public Interest Parties Opposition at 5 (explaining that the National Sheriffs’ Association’s argument “conflates the Commission’s authority over what service providers may charge ratepayers with the facilities’ authority over what safety and security measures the facility and its service providers may choose to employ at their own expense”).

⁶² National Sheriffs’ Association Stay Petition at 7; Martha Wright-Reed Act § 3(b)(2).

types of facilities (jails and prisons) and then four tiers of jails based on size.”⁶³ Because record data did “in fact, indicate significant variations in costs due to facility size” the Commission decided to adopt this “granular tiering structure” to better capture cost differences between facilities of different sizes.⁶⁴ Thus, the National Sheriffs’ Association is incorrect in asserting that the Commission did not consider cost differences based on facility size and other characteristics as required by the Martha Wright-Reed Act.

18. In establishing the upper bounds of its zones of reasonableness for each rate cap tier, the Commission “account[ed] for the possibility that some correctional facilities may incur . . . used and useful costs in allowing access to IPCS” using the best data available to it.⁶⁵ Because the Commission had “no reliable reported correctional facility cost data” from IPCS providers, the Commission chose to rely on the National Sheriffs’ Association’s 2015 cost survey, which “[was] the only available correctional facility cost data reported by correctional facility representatives in the record.”⁶⁶ The Commission relied on those data in incorporating \$0.02 into the upper bounds of the Commission’s zones of reasonableness for all tiers of facilities.⁶⁷ The \$0.02 figure was derived from the Commission’s analysis in 2021 of the amount of used and useful correctional facility costs” supported by the cost survey for prisons and jails with average daily populations of 1,000 or more.⁶⁸ Because “the record ha[d] not developed in any meaningful way since” 2021, the Commission saw “no principled or reasonable basis on which to depart from that determination” for prisons or jails with average daily populations of 1,000 or more.⁶⁹ The Commission also included a \$0.02 allowance for facility costs in the upper bounds of the zones of reasonableness for jails with lower average daily populations (i.e., small jails and very small jails) because despite “numerous and repeated public attempts to obtain relevant data” commenters “[had] not substantiated their claims that correctional facility costs are higher in smaller facilities.”⁷⁰ In sum, the Commission concluded that “the record [did] not support the inclusion of an amount greater than \$0.02 into the upper bounds of the zones of reasonableness” for any facility tier.⁷¹ Contrary to the National

⁶³ 2024 IPCS Order at 79, para. 146.

⁶⁴ *Id.* at 81-82, paras. 148, 150.

⁶⁵ *Id.* at 90, para. 163.

⁶⁶ *Id.* at 94, para. 170.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 95, para. 171.

⁷⁰ *Id.* at 92, 98, paras. 166, 177. *See also id.* at 92, para. 166 (“In particular, the failure of providers and facilities—which would have the relevant data—to provide such data to the Commission despite repeated calls for them to do so warrants an adverse inference that actual information would not support the case for recovery.”). The National Sheriffs’ Association also conveniently ignores the fact that the Commission sought comment in the 2024 IPCS Notice regarding further disaggregation of the very small jail tier representing “those jails with average daily population of less than 100.” *Id.* at 314, para. 612. The Commission recognized that “there may be additional distinctions within this tier that are not effectively captured by the available data.” *Id.* As a result, the Commission sought comment on “the types of cost or other data that would be most helpful for the Commission to collect from providers serving this tier of facilities to ascertain whether, and if so how, to further disaggregate this tier to capture any variability that may exist within segments of this tier.” *Id.* The Commission also sought comment on the use of a uniform additive to account for correctional facility costs. *Id.* at 317, para. 621. Thus, cost issues pertaining to small and very small jails, including facility costs for those jails, are still active issues under consideration in this proceeding. However, the Commission could not wait for additional data on these issues given the requirements of the Martha Wright-Reed Act. *See* Martha Wright-Reed Act § 3(a) (requiring the Commission to promulgate regulations necessary to implement the Act not earlier than 18 months and not later than 24 months after the date of enactment).

⁷¹ 2024 IPCS Order at 98, para. 177.

Sheriffs' Association's position, this ratemaking treatment is fully consistent with section 3(b)(2) of the Martha Wright-Reed Act.

19. The National Sheriffs' Association also ignores that the Commission set its rate caps *above* the lower bounds of its zones of reasonableness for each tier. The Commission "found it appropriate to set rates somewhat above the lower bounds to minimize reliance on the imperfect data on which [the Commission based its] rate caps."⁷² As relevant here, the Commission "recognize[d] that facilities may incur certain costs that are used and useful in the provision of IPCS but the lack of reliable data in the record makes it impossible to quantify those costs with any degree of precision."⁷³ The Commission thus took "the conservative approach" of setting rate caps "somewhat above the lower bounds to account for facilities' used and useful costs."⁷⁴ The National Sheriffs' Association fails to contend with the Commission's actions in this regard and otherwise provides no further evidence that the Commission somehow failed to consider cost differences among correctional facilities of different sizes.

20. *Other Issues.* The National Sheriffs' Association takes issue with several aspects of the 2024 IPCS Order that it argues "are likely to be found arbitrary and capricious."⁷⁵ First, the National Sheriffs' Association complains that "the Commission criticize[d] the [National Sheriffs' Association's] cost survey as outdated and likely overstated," adding that no party submitted contradictory cost data.⁷⁶ It further argues that "Pay Tel submitted very recent data that corroborated" the National Sheriffs' Association's cost survey.⁷⁷ But the National Sheriffs' Association fails to recognize that the Commission did, in fact, rely on its data in adding \$0.02 for facility costs to the upper bounds of its zones of reasonableness.⁷⁸ The Commission acknowledged that the "\$0.02 estimate continues to reflect the best data available concerning facility costs despite outstanding questions."⁷⁹ "[A]s the Commission has explained, 'an agency may reasonably rely on the best data available where perfect information is unavailable.'"⁸⁰ As to the National Sheriffs' Association's assertion about data provided by Pay Tel, the Commission "decline[d] to give any weight to the survey" because it was "unrepresentative" and did "not attempt to account for the nuances of how safety and security measures are administered."⁸¹ The National Sheriffs' Association fails to acknowledge the Commission's treatment of Pay Tel's data and fails in any way to support its claim that those data "corroborated" the National Sheriffs' Association 2015 cost survey.

21. The National Sheriffs' Association then argues that the Commission applied the used and useful framework inconsistently to safety and security costs.⁸² We addressed this argument fully in the

⁷² *Id.* at 118, para. 213.

⁷³ *Id.* at 119, para. 214.

⁷⁴ *Id.* at 119, para. 214.

⁷⁵ National Sheriffs' Association Stay Petition at 7.

⁷⁶ *Id.* at 7-8.

⁷⁷ *Id.* at 8.

⁷⁸ *See, e.g., 2024 IPCS Order* at 94, para. 170.

⁷⁹ *Id.* at 108, para. 192.

⁸⁰ *Id.* at 93, para. 167 (citing *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, 9544, para. 62 (2021) (*2021 ICS Order*)).

⁸¹ *2024 IPCS Order* at 97, para. 175.

⁸² National Sheriffs' Association Stay Petition at 8.

Securus and *Pay Tel Stay Denial Orders*.⁸³ Because the Commission evaluated the safety and security cost data based on the preponderance of tasks within each of seven categories, it is not surprising that, in some cases, such as for law enforcement support services, some functions within a given category might benefit consumers.⁸⁴ But that does not mean the costs of those functions, much less all the costs within that category, should be recoverable under the used and useful standard. Indeed, in the case of law enforcement support services, the Commission found 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.”⁸⁵ Conversely, the Commission concluded that there may be other categories of safety and security measures that provide no direct benefit to the consumer, but were used and useful and therefore recoverable through IPCS rates.⁸⁶ Should a given provider be able to demonstrate that it provides used and useful safety and security measures whose costs are not generally recoverable under the rate caps, it is free to seek a waiver addressing its special circumstances.⁸⁷

22. Finally, the National Sheriffs’ Association argues that the Commission failed to consider the policy effects of its actions in the *2024 IPCS Order* insofar as “a failure to properly account for safety and security measures would lead to a reduction in access to IPCS.”⁸⁸ It argues that the Commission’s actions in connection with safety and security measures “impact[] the operation and budget of every jail in the country that depends on IPCS rates for recovery of safety and security measures related to IPCS,” “impinge[] directly upon sheriffs’ ability to determine which safety and security measures are necessary to permit IPCS and interfere[] with individual state and local governments’ ability to determine budgets.”⁸⁹ We disagree.

23. The Commission fully recognized the potential budgetary impacts of its actions and therefore adopted staggered compliance dates for its reforms eliminating site commissions and its new audio and video IPCS rates caps. These time frames recognize that “as a general matter, IPCS providers, governmental officials, and correctional officials may need additional time . . . to renegotiate contracts” and to “accommodate states’ and localities’ legislative and budgetary processes.”⁹⁰ The National Sheriffs’ Association ignores these parts of the Commission’s compliance plan and fails to explain why the specified timeframes will be inadequate.⁹¹

⁸³ *Securus Stay Denial Order* at 8, para. 16; *Pay Tel Stay Denial Order* at 9-10, para. 22. See also Public Interest Parties Opposition at 6 (noting the National Sheriffs’ Association’s repetition of arguments previously dealt with by the Bureau).

⁸⁴ *2024 IPCS Order* at 212, para. 394 (recognizing that “some functions in this category [law enforcement support services] may provide a benefit to incarcerated people”). The zone of reasonableness approach the Commission used in developing its overall rate caps helped to account for these outcomes. See *id.* at 196, 206-08, paras. 372, 387-88. See also Opposition to Pay Tel Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375, at 7 (filed Oct. 14, 2024) (Public Interest Parties Oct. 14, 2024 Opposition).

⁸⁵ *2024 IPCS Order* at 213, para. 394.

⁸⁶ For example, 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.” *2024 IPCS Order* at 209, para. 391.

⁸⁷ *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).

⁸⁸ National Sheriffs’ Association Stay Petition at 8.

⁸⁹ *Id.* at 9.

⁹⁰ *2024 IPCS Order* at 305, 307, paras. 588, 593.

⁹¹ See also *infra* Section B.

24. The National Sheriffs' Association's claims that the Commission's actions will lead to a reduction in access to IPCS are similarly speculative and overstated at best.⁹² The National Sheriffs' Association has not provided any concrete evidence that the Commission's actions have or will lead to such a reduction. Instead, the National Sheriffs' Association relies entirely on a series of hypothetical statements that "the situation will be forced in many cases" or that the Commission's treatment of safety and security "will in most instances force Sheriffs to decide between access to IPCS for incarcerated people and other resources dedicated to the Sheriff's duty to protect."⁹³ The National Sheriffs' Association has not met its burden to substantiate its claims. As the Commission explained, "[g]iven the availability of reimbursement from IPCS providers for costs that are used and useful in the provision of IPCS, consistent with [the Commission's] statutory duties," there is "no reason to believe that correctional institutions will decrease or limit access to IPCS."⁹⁴

25. With regard to the argument that the Commission's actions in connection with safety and security measures somehow interfere with the discretion of correctional officials, we reiterate what we said in the *Pay Tel Stay Order*: "The Commission . . . does not discount, second guess, or otherwise intrude upon the discretion of correctional officials and IPCS providers in its evaluation of the costs associated with safety and security measures that should be included in the Commission's ratemaking calculus and those that should not."⁹⁵ And as the Commission explained in the *2024 IPCS Order*, "[w]hile correctional authorities certainly have expertise on safety and security as a general matter, Congress has not vested the authority in them to decide which safety and security costs should be recoverable in IPCS rates."⁹⁶

26. At bottom, the National Sheriffs' Association fundamentally misunderstands the Commission's treatment of safety and security measure costs in the *2024 IPCS Order*. Indeed, "[c]ontrary to the characterizations of some commenters, [the Commission's] actions . . . [were] about fulfilling [the Commission's] obligation under the Martha Wright-Reed Act to adopt a compensation plan for IPCS that ensures just and reasonable rates and charges for IPCS consumers and providers and fair compensation for IPCS providers."⁹⁷ The Commission's actions were "not about questioning or overriding the judgment of correctional officials" or "bar[ring] correctional authorities from implementing any safety and security measures they deem necessary."⁹⁸ The Commission's task was "a narrow one: to determine the extent to which claimed IPCS costs can be recovered through regulated rates charged to consumers."⁹⁹ The National Sheriffs' Association falls far short of showing that the Commission made any legal or factual error in completing that task.

27. The National Sheriffs' Association thus has failed to establish that its challenges to the Commission's actions are likely to succeed on the merits.

B. The National Sheriffs' Association Has Failed to Show It Will Suffer Irreparable Harm

28. The National Sheriffs' Association likewise fails to demonstrate that it will suffer imminent and irreparable harm without a stay. To establish irreparable harm, a petitioner must show that

⁹² *Infra* Section B (discussing alleged harms).

⁹³ National Sheriffs' Association Stay Petition at 9, Attach. B, Declaration of Sheriff Kieran Donahue at para. 5.

⁹⁴ *2024 IPCS Order* at 166, para. 311.

⁹⁵ *Pay Tel Stay Denial Order* at 8, para. 20.

⁹⁶ *2024 IPCS Order* at 190, para. 362.

⁹⁷ *Id.* at 208-09, para. 390.

⁹⁸ *Id.* at 209, para. 390.

⁹⁹ *Id.*

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.’”¹⁰⁰ In doing so, the petitioner must present actual evidence to “substantiate [its] claim” of injury.¹⁰¹ “‘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.’”¹⁰² The National Sheriffs’ Association has not met its burden to make and substantiate these showings.

29. The National Sheriffs’ Association’s attempt to establish irreparable harm relies primarily on how, in its view, correctional officials will respond to the *2024 IPCS Order*. The National Sheriffs’ Association asserts that “the immediate first step for many Sheriffs” in response to that *Order* “will be to reduce – or in extreme cases, eliminate – [IPCS] service.”¹⁰³ This reduction will occur, according to the National Sheriffs’ Association, because the correctional officials will have to “secure alternative financing” for safety and security measures that have previously been paid for through IPCS rates.¹⁰⁴ The National Sheriffs’ Association argues, in effect, that if alternative financing is not forthcoming, correctional officials will have to “rethink the economics of IPCS” in their facilities and “almost certain[ly]” reduce or eliminate the provision of IPCS in most jails.¹⁰⁵

30. In making this argument, the National Sheriffs’ Association ignores key aspects of the Commission’s compensation plan for IPCS. As an initial matter, the National Sheriffs’ Association ignores the compliance dates that the Commission established for its rate cap and site commission reforms.¹⁰⁶ Because those compliance dates will give correctional facilities ample time to “secure alternative financing,” the National Sheriffs’ Association has failed to establish that the Commission’s reforms will irreparably harm correctional facilities, much less substantiate that any such harm will be imminent.

31. In developing its compensation plan for IPCS, the Commission was well aware that site commissions had historically been used to defray the costs of “safety, security, surveillance, and administrative tasks” that are not used and useful in the provision of IPCS.¹⁰⁷ The Commission recognized that its site commission reforms may require state and local budgetary processes to account

¹⁰⁰ *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)) (*Mexichem v. EPA*); *Securus Stay Denial Order* at 15, para. 31; see *Ligado Stay Denial Order*, 36 FCC Rcd at 1267, para. 10.

¹⁰¹ *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

¹⁰² *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).

¹⁰³ National Sheriffs’ Association Stay Petition at 10. The National Sheriffs’ Association also suggests that IPCS “driv[es] the [safety and security] costs that are no longer recoverable” in IPCS rates. National Sheriffs’ Association Stay Petition at 10. The Commission considered this issue in the *2024 IPCS Order*, but found such safety and security costs “are not caused by IPCS communications, and thus neither party to such communications reasonably can be seen as causing those costs through the use of IPCS.” See *2024 IPCS Order* at 133, para. 246 n.846; see also *id.* at 202, para. 379 n.1359; *Pay Tel Stay Denial Order* at 9, para. 21. The National Sheriffs’ Association fails to contest this conclusion.

¹⁰⁴ National Sheriffs’ Association Stay Petition, Attach. B, Declaration of Sheriff Kieran Donahue at para. 8.

¹⁰⁵ National Sheriffs’ Association Stay Petition at iii & Attach. B, Declaration of Sheriff Kieran Donahue at para. 8; see *id.*, Attach. B, Declaration of Sheriff Kieran Donahue at para. 5 (arguing that the *2024 IPCS Order* “will in most instances force Sheriffs to decide between access to IPCS for incarcerated people and other resources dedicated to the Sheriff’s duty to protect”).

¹⁰⁶ *2024 IPCS Order* at 304-05, para. 587.

¹⁰⁷ *Id.* at 137, para. 251.

for lost site commission revenues.¹⁰⁸ To accommodate those processes “to the extent possible” given the “directives of the Martha Wright-Reed Act,¹⁰⁹ the Commission deferred the compliance dates for its rate cap and site commission reforms for many IPCS contracts until January 1, 2026, and for the medium and smaller jails the National Sheriffs’ Association’s members typically operate, until April 1, 2026—more than 20 months from the release of the *2024 IPCS Order* and more than 17 months from now.¹¹⁰

32. Given these staggered compliance dates, most correctional facilities, and particularly most medium and smaller facilities managed by the National Sheriffs’ Association members, will face no immediate pressure to make up any shortfall for the costs of safety and security measures that have previously been paid for through IPCS rates. Facilities managed by those sheriffs will continue to benefit from site commissions that defray, among other costs, the costs of any safety and security measures for an extended period of time. To be sure, the Commission’s rate cap and site commission reforms will require that National Sheriffs’ Association’s members obtain alternative financing for those safety and security measures that are not used and useful for IPCS to the extent that they elect to continue employing them. But the National Sheriffs’ Association fails to substantiate that its members will be unable to do so within the compliance timeframes set by the Commission. Indeed, the National Sheriffs’ Association asserts only that it is “by no means guaranteed” that its members will receive alternative financing for safety and security measures that have previously been paid for through IPCS rates,¹¹¹ an assertion that falls far short of establishing that irreparable harm is “certain,” “not theoretical,” and “imminent.”¹¹²

33. The National Sheriffs’ Association also fails to acknowledge that the rate caps adopted in the *2024 IPCS Order* “reflect, based on the record before [the Commission], all of the used and useful costs incurred in the provision of IPCS regardless of whether such costs are incurred by IPCS providers or correctional facilities,”¹¹³ and that the Commission’s compensation plan for IPCS “permit[s] IPCS providers to reimburse correctional facilities for “the used and useful costs they may incur” in the provision of IPCS.¹¹⁴ To the extent facilities incur such used and useful costs, the compliance timeframes set by the Commission should allow them ample time to negotiate with providers to obtain reimbursement.¹¹⁵

34. The National Sheriffs’ Association suggests, in addition, that its member Sheriffs will be irreparably harmed because the *2024 IPCS Order* will require them to reevaluate their operations.¹¹⁶ These reevaluations will include, according to the National Sheriffs’ Association, a “complete reassessment of the level of IPCS the correctional facility can afford,” as well as “a reassessment of each incarcerated person’s risk profile.”¹¹⁷ And if the facilities are unable to secure alternative financing, the reassessments may require “a redistribution of facility resources, such as staffing, scheduling, programming, and training” and may ultimately “force Sheriffs to decide between access to IPCS for

¹⁰⁸ *Id.* at 307-08, para. 594.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 304-05, 307-08, paras. 587, 594.

¹¹¹ National Sheriffs’ Association Stay Petition, Attach. B, Declaration of Sheriff Kieran Donahue at para. 8.

¹¹² *See, e.g., Mexichem v. EPA*, 787 F.3d at 555 (internal quotation marks omitted).

¹¹³ *2024 IPCS Order* at 132, para. 246.

¹¹⁴ *Id.* at 90-91, para. 163; Public Interest Parties Opposition at 7 (highlighting the reimbursement mechanism and noting that “the lower rates may also lead to an increased usage of IPCS”).

¹¹⁵ *Id.* at 305-08, paras. 588-94.

¹¹⁶ National Sheriffs’ Association Stay Petition at iii, 10-11; *see id.*, Attach B at paras. 5-11.

¹¹⁷ National Sheriffs’ Association Stay Petition at 10-11.

incarcerated people and other resources dedicated to the Sheriff's duty to protect."¹¹⁸ We fail to see how having to reevaluate their operations harms correctional facilities, much less rises to the level of an injury that is "both certain and great."¹¹⁹

35. In short, the National Sheriffs' Association's claims of irreparable harm are vague and attenuated, and ignore the compliance timeframes the Commission established for its rate cap and site commission reforms as well as the opportunity for correctional facilities to be reimbursed for any used and useful costs they incur in the provision of IPCS. Those claims implicitly assume, without acknowledging the relevant part of the Commission's compensation plan for IPCS, that correctional facilities will be unable to obtain reimbursement for those used and useful costs. Those claims also assume, without identifying even an approximate scope or scale of the amounts involved, that correctional facilities will be unable to secure alternative funding for the costs of other safety and security measures that have been, and—until the compliance dates set by the Commission—may continue to be, financed through site commissions and providers' higher rate caps.¹²⁰ We therefore conclude that the National Sheriffs' Association has failed to demonstrate any imminent, actual, irreparable harm resulting from the *Order*.

C. The National Sheriffs' Association Has Not Shown That a Stay Is in the Public Interest and Would Not Harm Other Parties

36. We next conclude that 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 objectives mandated by the Martha Wright-Reed Act and necessary to protect consumers.

37. The National Sheriffs' Association contends that a stay would benefit the public interest because implementation of the *2024 IPCS Order* will result in many sheriffs "reduc[ing] – or in extreme cases, eliminat[ing]" IPCS at their facilities.¹²¹ As we observed in the *Securus* and *Pay Tel Stay Denial Orders*, the Commission "found similar concerns raised in the record to be generally unsupported"; and like *Securus* and *Pay Tel*, the National Sheriffs' Association "offers no further substantiation for such claims."¹²² Nevertheless, the *2024 IPCS Order* explicitly accounts for these theorized harms by

¹¹⁸ *Id.* at iii; *id.*, Attach. B, Declaration of Sheriff Kieran Donahue at para. 5; *see id.*, Attach. B, Declaration of Sheriff Kieran Donahue at para. 11 (asserting that Sheriffs may be forced to reduce or eliminate "discretionary programs or functions"; defer "spending on maintenance, purchases, or building improvements," "filling vacancies of nonessential personnel," hiring staff for newly authorized positions"; and reduce "discretionary travel"). *Cf.* *2024 IPCS Order* at 166, para. 310 ("To the extent commenters' arguments against the elimination of site commissions are premised on the loss or depletion of state programs currently funded by site commission payments, the 'just and reasonable' standard of the Communications Act does not contemplate funding such programs that are unrelated to the provision of IPCS through regulated rates, regardless of how worthy those programs may be.").

¹¹⁹ *See, e.g., Mexichem v. EPA*, 787 F.3d at 555 (internal quotation marks omitted).

¹²⁰ *Cf. 2024 IPCS Order*, at 92, 98, paras. 166, 177 (recognizing the National Sheriffs' Association failure to provide reliable data on correctional facility costs despite repeated Commission requests for such data).

¹²¹ National Sheriffs' Association Stay Petition at 10-12. Specifically, the National Sheriffs' Association claims that, as a consequence of the reforms adopted in the *2024 IPCS Order*, jails will incur "lost money, time, and effort to comply," and thus, for example, will only be able to staff "two hours of call monitoring a per day [sic]." *Id.* at 11.

¹²² *Securus Stay Denial Order* at 18, para. 39; *Pay Tel Stay Denial Order* at 19, para. 41; *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; *see also* Public Interest Parties Oct. 14, 2024 Opposition at 11-12 ("Pay Tel provides no evidence that these outcomes are likely. . . . [N]othing in the [2024 IPCS Order] prevents facilities from offering the safety and security features they see fit."); Public Interest Parties Opposition at 8 (noting that the National Sheriffs' Association has "not provided sufficient evidence substantiating its claim that reduced IPCS access would be likely"). Indeed, the National Sheriffs' Association acknowledges that "inmate communications with family and friends is a significant contributor to the adherence to rules and procedures during incarceration," and that reduction in IPCS may compromise "incarcerated peoples' [sic] mental health and well-being," which risks "rais[ing] the level of harm to the incarcerated person him or herself,

(continued....)

extending the transition deadlines for the new rate cap and site commission rules, which the National Sheriffs' Association fails to acknowledge.¹²³ As discussed above, those deadlines should provide correctional facilities ample time to secure alternative funding for programs and functions that are now funded through site commissions or higher IPCS rates that will be charged until the compliance deadline.

38. 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 that also inure to the public's benefit.¹²⁴ For example, and as the Commission observed in the *2024 IPCS Order*, consumers stand to gain from the elimination of ancillary service charges, which are a source of consumer confusion and detrimental provider practices.¹²⁵ 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,¹²⁶ particularly when Congress expressly directed the Commission to

(Continued from previous page)

other incarcerated people, and the jail staff." National Sheriffs' Association Stay Petition at 12. These ramifications indicate that ensuring the continued provision of IPCS is in carceral facilities' own interest, financial and otherwise. See *2024 IPCS Order* at 20, para. 29 & n.120 (observing that formerly incarcerated persons "suggest[ed] that unlawful activities within correctional facilities would likely decrease if communications services were affordable and accessible").

¹²³ See *Securus Stay Denial Order* at 18, para. 39; *Pay Tel Stay Denial Order* at 19, para. 41; *2024 IPCS Order* at 304-08, paras. 587-94.

¹²⁴ See, e.g., *2024 IPCS Order* 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 Commission's IPCS reforms); Public Interest Parties Oct. 14, 2024 Opposition at 8 (arguing that Pay Tel's similar stay request was overbroad, as the *2024 IPCS Order* "adopts reforms on a number of other important issues, which Pay Tel's Stay Request does not address"); *id.* at 10 (arguing that "delaying the implementation of the [2024 IPCS Order] would cause significant financial and other harms to incarcerated people and their families that have been subject to unreasonable and predatory prices for too long" and "would add millions of dollars of financial burden for these communities each year"). The National Sheriffs' Association seeks to distinguish its petition from that filed by Securus by claiming that it "seeks only to temporarily preserve the status quo while the courts consider the pending requests for review." National Sheriffs' Association Stay Petition at 12-13. The National Sheriffs' Association fails to explain how this distinguishes the relief it seeks from that sought by Securus, much less how a stay would not harm incarcerated people and their families.

¹²⁵ See *2024 IPCS Order*, at 224-26, 227-29, paras. 418-19, 421-26.

¹²⁶ 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 argued in response to Pay Tel's stay petition, a stay will "deprive many incarcerated people of the regular contact with their families and communities that is essential to their health and wellbeing, as well as their access to legal representation." Public Interest Parties Oct. 14, 2024 Opposition at 10-11; see also Public Interest Parties Opposition at 8; Opposition to Securus Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375, at 9-10 (filed Oct. 1, 2024) ("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]. Such delay would prevent many incarcerated people from the health, safety, and wellbeing benefits that reliable communications with their loved ones could bring."); Opposition of Stephen A. Raheer to Securus Technologies' Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (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").

enact regulations to implement the Martha Wright-Reed Act within 24 months from the statute's enactment.¹²⁷

39. For all these reasons, we find that the National Sheriffs' Association has not shown that a stay is in the public interest and would not harm other parties.

IV. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED that, 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.

41. IT IS FURTHER ORDERED, that the National Sheriffs' Association Petition for Stay Pending Judicial Review of the Report and Order, filed October 16, 2024, in WC Docket Nos. 23-62 and 12-375, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

¹²⁷ See Public Interest Parties Oct. 14, 2024 Opposition at 11 (“Staying the [2024 *IPCS Order*] would also frustrate Congress’s express directive that regulations implementing the [Martha Wright-Reed] Act be timely promulgated and effectuated to afford incarcerated people and their families much-needed relief.”); Public Interest Parties Opposition at 8 (same).



PUBLIC NOTICE

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DA No. 24-1099

Report No. SCL-00491

Thursday, October 24, 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 Rod 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-ASG-20100222-00495	P	Telstra Incorporated
Assignment		
Grant of Authority		Date of Action: 10/23/2024
Current Licensee: Telstra Corporation Limited FROM: Telstra Corporation Limited TO: Telstra Incorporated On February 22, 2010, Telstra Inc. (Telstra USA) filed a notification of the pro forma assignment of an interest in the Asia America Gateway (AAG) submarine cable system from Telstra Corporation Limited (TCL) to Telstra USA, effective November 28, 2008. AAG is a non-common carrier cable system connecting Malaysia, Singapore, Thailand, Brunei Darussalam, Vietnam, Hong Kong SAR, Philippines and the United States. TCL was a co-licensee on AAG. See File No. SCL-LIC-20070824-00015, Actions Taken Under Cable Landing License Act, Report No. SCL-00068, Public Notice, 23 FCC Rcd 10386 (IB 2008). TCL assigned to Telstra USA the interests in AAG held by TCL within U.S. territorial limits, except for TCL's interests within the Guam territorial limits. At the time of the assignment, Telstra USA, a Delaware corporation, was a wholly owned subsidiary of TCL, an Australian entity.		
SCL-ASG-20100222-00496	P	Telstra International Limited
Assignment		
Grant of Authority		Date of Action: 10/23/2024
Current Licensee: Telstra Corporation Limited FROM: Telstra Corporation Limited TO: Telstra International Limited On February 22, 2010, Telstra International Limited (TIL) filed a notification of the pro forma assignment of an interest in the Asia America Gateway (AAG) submarine cable system from Telstra Corporation Limited (TCL) to TIL, effective November 28, 2008. AAG is a non-common carrier cable system connecting Malaysia, Singapore, Thailand, Brunei Darussalam, Vietnam, Hong Kong SAR, Philippines and the United States. TCL was a co-licensee on AAG. See File No. SCL-LIC-20070824-00015, Actions Taken Under Cable Landing License Act, Report No. SCL-00068, Public Notice, 23 FCC Rcd 10386 (IB 2008). TCL assigned to TIL the interests in AAG held by TCL within the Guam territorial limits, as well as TCL's interests in the territorial limits of any other country other than the United States. At the time of the assignment, TIL was a wholly owned subsidiary of TCL, both Australian entities.		
SCL-MOD-20241008-00040	E	PPC 1 Limited
Modification		
Grant of Authority		Date of Action: 10/23/2024
PPC 1 Limited and PPC 1 (US) (Licensees) request that the Commission modify the cable landing license for the PPC-1 submarine cable system (PPC-1) (SCL-MOD-20180803-00030; see also SCL-LIC-20080213-00001, SCL-MOD-20090910-00027) to remove the condition that they comply with the Letter of Assurances dated July 31 2018, from David Teoh, CEO, TPG Telecom Limited, to Assistant Secretary for Border, Immigration and Trade, Office of Policy, Department of Homeland Security (2018 LOA). The PPC-1 Cable is a non-common carrier cable system connecting Australia, Guam, and Papua, New Guinea. PPC 1 Limited owns and operates the wet link portions of the PPC-1 cable in international waters and PPC 1 US owns the portion of the PPC-1 system between the cable landing station at Piti, Guam, and the U.S. territorial sea extending from Guam. Telekom PNG Limited owns and operates the PNG spur and cable landing station in Papua, New Guinea. Telekom PNG Limited is not a party to the 2018 LOA. In 2018, at the request of the Licensees the Commission modified the cable landing license to condition it on compliance with the 2018 LOA entered into by TPG Telecom Limited (TPG Telecom), the Licensee's parent company. See File No. SCL-MOD-20180803-00030, Actions Taken Under Cable Landing License Act, Report No. SCL-00222, Public Notice, 33 FCC Rcd 8211 (IB 2018). In 2020, the Commission conditioned the grant of the transfer of control of the Licensees from TPG Telecom to Vodafone Hutchison Australia Pty Limited d/b/a Vodafone Australia (later renamed TPG Telecom Limited) (Vodafone/TPG Telecom Transaction) on the continued compliance with the 2018 LOA. See File No. SCL-T/C-20181119-00036, Actions Taken Under Cable Landing License Act, Report No. SCL-00222, Public Notice, 35 FCC Rcd 2903 (IB 2020). The Licensees state that the 2018 LOA was superseded by a March 19, 2020, national security agreement (2020 NSA), as a condition of clearance of the Vodafone/TPG Telecom Transaction by the Committee on Foreign Investment in the United States pursuant to Section 721 of the Defense Production Act of 1950, as amended. Consistent with the confidentiality provisions of Section 721, the text of the 2020 NSA is not public. The Licensees request that we remove the 2018 LOA as a condition of the cable landing license. They state that the Department of Homeland Security concurs with this request. In the absence of any objection, we grant the Licensees request and remove the condition on the cable landing for the PPC-1 cable system that the PPC 1 Limited and PPC 1 (US) comply with the terms of the 2018 LOA.		

Transfer of Control

Grant of Authority

Date of Action: 10/23/2024

Current Licensee: Antilles Crossing-St. Croix, Inc.**FROM:** Danemann Limited**TO:** Digicel Holdings (Bermuda) Limited

Antilles Crossing-St. Croix, Inc. (Antilles Crossing-St. Croix) filed an application for consent to the transfer control of Antilles Crossing St. Croix from Danemann Limited (Danemann) to Digicel Holdings (Bermuda) Limited (Restructured DHL). Antilles Crossing St. Croix, a U.S. Virgin Islands corporation, is the sole licensee of the Antilles Crossing System (SCL-LIC-20031125-00032), a non-common carrier cable system that connects Hams Bay, St. Croix, U.S. Virgin Islands; Vigie Beach, Saint Lucia; and Needham's Point, Barbados. According to the Applicants, although the Antilles Crossing System has been rebranded as part of the larger Southern Caribbean Fiber network, it still operates as a discrete system pursuant to the cable landing license granted by the Commission in 2004. The Applicants filed a supplement on February 5, 2024. The application was placed on Public Notice on February 9, 2024. See File No. SCL-T/C-20231211-00039, Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00448NS, Public Notice (OIA Feb. 9, 2024). No comments or oppositions were filed in response to the Public Notice.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. 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 (IB Apr. 19, 2022). On February 13, 2024, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to this request from the Committee. On October 3, 2024, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License (Petition). On October 4, 2024, NTIA filed a corrected Petition to include both Antilles Crossing St. Croix, Inc. and Digicel Holdings (Bermuda) Limited as the Parties. The Committee has no objection to the Commission granting the Application, provided that the Commission conditions its approval on the assurances of Digicel Holdings (Bermuda) Limited and Antilles Crossing-St. Croix, Inc. to abide by the commitments and undertakings set forth in the September 23, 2024, Letter of Agreement (LOA) attached to the Petition to Adopt Conditions to Authorization and License.

The Application is for the second step of a broader planned two-step reorganization and refinancing (Restructuring) of Antilles Crossing St. Croix and its non-U.S. affiliates (collectively, the Digicel Group). Prior to the restructuring Denis O'Brien held a controlling approximate 100% indirect ownership in Antilles Crossing St. Croix through Danemann and Digicel Holdings (Bermuda) Limited (DHL). Pursuant to the restructuring, DHL will issue shares to its creditors which will result in no individual or entity having a controlling interest in Restructured DHL or Antilles Crossing St. Croix.

Step One followed a pro forma restructuring that occurred on January 29, 2024. See File No. SCL-T/C-20240228-00005. In Step One, pursuant to Bermuda law, DHL, a subsidiary of Danemann and the indirect parent of Antilles Crossing St. Croix, issued new shares of DHL to its creditors. Immediately prior to the completion of Step One, Danemann acquired a direct 100% voting and equity interest in Antilles Crossing St. Croix. As a result of this pro forma transaction, the Applicants state that Danemann directly owns and controls Antilles Crossing St. Croix during the pendency of the U.S. regulatory review of Step Two of the restructuring, and Denis O'Brien will still have ultimate control of Antilles Crossing St. Croix during that period.

In Step Two of the Restructuring, Danemann will transfer control of Antilles Crossing St. Croix to Restructured DHL, which by that time will have new ownership following the closing of Step One of the Restructuring - the issuance of new shares to the creditors. Upon consummation, the Applicants state that Antilles Crossing St. Croix will reunite with its non-U.S. affiliates, which at that time will be under common ownership by Restructured DHL, with entities controlled, managed, advised, or subadvised by U.S. investors PGIM, Inc. (PGIM) and Contrarian Capital Management, L.L.C. (CCM).

The Applicants state that following consummation of Step Two of the Restructuring, Antilles Crossing St. Croix will be wholly owned by Fibre Investments Holdings Ltd (St. Lucia) IBC, which, in turn, will be wholly owned by Fibre Investments Ltd. (FIL), both Saint Lucia holding companies. FIL will be wholly owned by Digicel International Finance Limited (St. Lucia) IBC, a St. Lucia holding company, which, in turn, will be wholly owned by Digicel Intermediate Holdings Limited (DIHL), a Bermuda holding company. DIHL will be wholly owned by Digicel Holdings (Bermuda) Limited (Restructured DHL), a Bermuda holding company.

The Applicants state that the following entities and individual will ultimately hold 10% or greater equity and/or voting interests in Restructured DHL following consummation of the Step Two Restructuring transaction: (1) PGIM, a New Jersey investment advisory company; (2) CCM, a Delaware investment management company; and (3) Denis O'Brien, a citizen of Ireland and resident of Malta.

PGIM ownership of Restructured DHL. (1) Prudential Investment Portfolios Inc. 15 - PGIM High Yield Fund (PHY), a Maryland investment company (estimated direct 19.59% voting and equity interest in Restructured DHL); (2) PGIM, a New Jersey investment advisory company for PHY and the more than 80 funds identified in the Application's Exhibit G (collectively, PGIM Funds), with the power to vote or direct the voting of and the power to dispose, or to direct the disposition of securities held by the PGIM Funds, none of which are individually disclosable, but which will collectively hold an estimated 46.59% voting and equity interest in Restructured DHL. The Applicants state that PGIM itself will not hold any equity interest in Restructured DHL. The Applicants state that other than the right to nominate a minority of the board (four of nine members), none of PGIM, the PGIM funds, including PHY, or any individuals or entities in the ownership and control chain will have any active

involvement in the day-to-day operations or management of Restructured DHL. (3) PGIM Holding Company, LLC (PGIM Holding), a Delaware holding company (100% voting and economic interest in PGIM); (4) Prudential Financial Inc. (Prudential), a New Jersey insurance company (100% voting and equity interest in PGIM Holding). The Applicants note that Prudential is a publicly traded insurance company listed on the New York Stock Exchanges with widely disbursed equity ownership.

CCM ownership of Restructured DHL. (1) Contrarian Emerging Markets L.P. (CEM LP), a Delaware investment company (estimated direct 10.18% voting and equity interest in Restructured DHL); (2) CCM, a Delaware investment management company with the power to vote or direct the voting of and the power to dispose, or to direct the disposition of securities held by the five Contrarian Funds (CEM LP; Boston Patriot Summer St. LLC; Contrarian EM II, LP; EMMA 1 Master Fund, L.P.; EMMA 2 Fund L.P.), none of which are individually disclosable, other than CEM LP, but which collectively will hold an estimated 20.60% voting and equity interest in Restructured DHL (including CEM LP's estimated 10.18% voting and equity interest). CEM II GP, LLC, a Delaware limited liability company, is the general partner of Contrarian EM II, LP; Emma 1 GP, LLC, a Delaware limited liability company, is the general partner of EMMA 1 Master Fund, L.P.; and Emma 2 GP, LLC, a Delaware limited liability company, is the general partner of EMMA 2 Fund, L.P. (The Applicants refer to such general partner entities together as the Contrarian Fund GPs). The Applicants state that other than the right to nominate a minority of the board directors of Restructured DHL (two of nine members), none of CCM, the Contrarian Funds, or any individuals or entities in the ownership and control chain will have any active involvement in the day-to-day operations or management of Restructured DHL. (3) CEM GP, LLC (CEM GP), a Delaware investment management general partnership, and general partner of CEM LP (estimated 10.18% voting interest in Restructured DHL; CEM GP has a 0.65% equity interest in CEM LP); (4) CCM GP Partners, LLC (CCM GP), a Delaware investment management company and the sole member of CEM GP and the Contrarian Fund GPs, with no voting interest and a 100% equity interest in each. (5) Bauer GP, LLC (Bauer GP), a Delaware holding company (60% equity interest and no voting interest in CCM GP); (6) CCM Investment, LLC (CCM Investment), a Delaware holding company/estate planning vehicle, with no voting interest and a 20% equity interest in CCM, and no voting interest and a 33.33% equity interest in Bauer GP. (7) Bauer Family GST Exempt 2014 Trust (Bauer Family Trust), a Delaware trust and estate planning vehicle formed September 26, 2014 for the benefit of Jon R. Bauer, holds no voting interest and a 100% equity interest in CCM Investment. (8) Jon R. Bauer, a U. S. citizen and investment manager, who is managing member of CCM, and holds a 100% voting interest and a 40% equity interest in CCM. Mr. Bauer also holds a 33.33% voting interest and no equity interest in CCM Investment. As non-member manager of CCM GP and each of the Contrarian Fund GPs, Mr. Bauer holds a 100% voting and no equity interest in CCM GP and each of the Contrarian Fund GPs. As managing member of Bauer GP, LLC, Mr. Bauer holds a 100% voting interest and a 66.67% equity interest.

Denis O'Brien ownership of Restructured DHL. (1) Digicel Investments Limited (Bermuda) (DIL), a Bermuda investment company (estimated 10% direct voting and equity interest in Restructured DHL); (2) Danemann Limited (Danemann), an Isle of Man investment company (100% voting and equity interest in DIL); (3) IoMCSL Nominees Limited (IoMCSL), an Isle of Man investment company (100% equity and voting interest in Danemann); (4) Denis O'Brien, citizen of Ireland and resident in Malta, who is the ultimate beneficial owner of IoMCSL's 100% voting and equity interest in Danemann pursuant to a declaration of trust over the shares in Danemann.

The Applicants state that post-consummation, no other entity will hold a 10% or greater direct or indirect economic or voting interest in Antilles Crossing St. Croix.

Conditions and Requirements: Restructured DHL certifies that it accepts and will abide by the routine conditions specified in 47 CFR § 1.767(g).

We grant the corrected Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on October 4, 2024. Accordingly, we condition grant of the Application on Digicel Holdings (Bermuda) Limited and Antilles Crossing-St. Croix, Inc. abiding by the commitments and undertakings set forth in the Letter of Agreement from Valery Bijou, Director, Antilles Crossing St. Croix, Inc. and Jarleth Burke, General Counsel Digicel Group, Digicel Holdings (Bermuda) Limited to Under Secretary for Strategy, Policy and Plans, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Office of Foreign Investment Review, Director, Under Secretary of Acquisition and Sustainment, U.S. Department of Defense, dated September 23, 2024 (LOA).

A copy of the Petition and the LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for SCL-T/C-20231211-00039 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 transfer of control application and the underlying cable landing license, SCL-LIC-20031125-00032, and thus grounds for declaring the cable landing license terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing license may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

SCL-T/C-20240228-00005

E

Antilles Crossing-St. Croix, Inc.

Transfer of Control

Grant of Authority

Date of Action: 10/23/2024

Current Licensee: Antilles Crossing-St. Croix, Inc.

FROM: Fibre Investments Holdings Limited IBC

TO: Danemann Limited

On February 28, 2024, Antilles Crossing-St. Croix, Inc. (Antilles Crossing St. Croix), filed a notification of the pro forma transfer of control of Antilles Crossing St. Croix from Fibre Investments Holdings Ltd (FIHL) to Danemann Limited (Danemann), effective January 29, 2024. Antilles Crossing St. Croix, a U.S. Virgin Islands corporation, is the sole licensee of, and owns and operates the U.S.-territory portion of, the Antilles Crossing System (SCL-LIC-20031125-00032), a non-common carrier cable system that connects Hams Bay, St. Croix, U.S. Virgin Islands; Vigie Beach, Saint Lucia; and Needham's Point, Barbados. The Applicant filed a supplement on October 15, 2024.

Prior to the transaction, Antilles Crossing St. Croix was an immediate wholly-owned subsidiary of FIHL, a St. Lucia company, which in turn was a subsidiary of Danemann, an Isle of Man investment company, ultimately owned and controlled by Denis O'Brien, an Irish citizen resident in Malta. In an internal reorganization, Danemann acquired all of the issued and outstanding shares of Antilles Crossing St. Croix from FIHL. Thus, both prior to the pro forma transfer of control transaction, Danemann and Antilles Cross St. Croix were under the ultimate control of Denis O'Brien, and after consummation of the pro forma transfer of control, Danemann and Antilles Cross St. Croix remain under the ultimate control of Denis O'Brien. This restructuring was the first step of a transaction in which control of Antilles Crossing St. Croix will be transferred from Danemann to Digicel Holdings (Bermuda) Limited. See File No. SCL-T/C-20231211-00039.



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://ftp.fcc.gov>)
TTY: (202) 418-2555

DA No. 24-1100

Report No. TEL-02399

Thursday, October 24, 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-T/C-20240307-00044

E

IUSATEL USA, INC.

Transfer of Control

Grant of Authority

Date of Action: 10/23/2024

Current Licensee: IUSATEL USA, INC.

FROM: IUSATEL USA, INC.

TO: IUSATEL USA, INC.

On March 7, 2024, IUSATEL USA, Inc. (IUSATEL), a Texas corporation that holds an international section 214 authorization for global facilities-based and resale service (ITC-214-19960923-00459), filed a notification of the pro forma transfer control of IUSATEL, effective December 23, 2023. IUSATEL is a wholly owned subsidiary of Total Play Telecomunicaciones, S.A.P.I. de C.V. (Total Play), which is ultimately owned and controlled by Ricardo Benjamín Salinas Pliego, a citizen of Mexico.

In a corporate restructuring, Grupo Salinas Telecom, S.A. de C.V. was removed as an intermediate holding company between Total Play and Ricardo Benjamín Salinas Pliego. Several intermediate holdings companies and trusts were inserted in its place between Total Play and Ricardo Benjamín Salinas Pliego. Specifically, Guaranty Trust number F/1410 (Trust F/1410), a Mexico entity, holds a 51.3% direct interest in Total Play, and Carey Propco Investments S.L.U. (Carey Propco), a Spain entity, holds the remaining 47.5% direct interest in Total Play. Trust F/1410 is wholly owned by Management Trust number F/1402, which in turn is wholly owned by Corporación RBS, S.A. de C.V. (Corporación RBS), both Mexico entities. Management Trust number F/555 (Trust F/555) holds a 99.994% ownership interest in Corporación RBS. Carey Propco is wholly owned by Lora Holdco Investments S.L.U. (Lora), a Spain entity. Lora is wholly owned by Nosara S.A.R.L. SPF, which is wholly owned by Nosara Fiduciary Estate Management Trust (Nosara Estate), both Luxembourg entities. Ricardo Benjamín Salinas Pliego is the sole owner of both Trust F/555 and the Nosara Estate.

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-MS-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 or 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)
)
Implications of Artificial Intelligence Technologies) CG Docket No. 23-362
on Protecting Consumers from Unwanted)
Robocalls and Robotexts)

**ORDER GRANTING EXTENSION OF TIME
TO FILE REPLY COMMENTS**

Adopted: October 24, 2024

Released: October 24, 2024

Reply Comments: November 15, 2024

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (CGB) grants, in part, a joint motion filed by several industry and consumer groups (collectively, Joint Petitioners) seeking a 30-day extension of time to file reply comments in the above-captioned proceeding.¹ For the reasons stated below, we find that a three-week extension of time is warranted and adjust the reply comment date accordingly.

2. On August 7, 2024, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking and Notice of Inquiry 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.² 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.³

3. On September 10, 2024, the Office of the Federal Register published a summary of the *TCPA AI NPRM & NOI* that established a comment deadline of October 10, 2024 and a reply comment deadline of October 25, 2024.⁴

4. On October 18, 2024, the Joint Petitioners requested a 30-day extension of the reply comment date to November 25, 2024.⁵ Specifically, the Joint Petitioners contend that “[t]he current reply comment deadline of October 25 provides very little time for interested parties, including Joint Petitioners, to thoroughly review and respond to the large volume of comments – over 30 comments –

¹ See American Bankers Association, CTIA, Electronic Privacy Information Center, National Consumer Law Center, and USTelecom – The Broadband Association Joint Motion for Extension of Time to File Reply Comments, CG Docket No. 23-362 (filed Oct. 18, 2024) (*Joint Petition*).

² *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*).

³ *Id.* at paras. 35-45.

⁴ 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).

⁵ See *Joint Petition* at 1-2.

that were filed in response to the broad range of novel and complicated issues raised in the NPRM and NOI.”⁶ The Joint Petitioners contend that a 30-day extension will afford interested parties with sufficient time to develop a complete record for the Commission’s consideration.⁷

5. As set forth in section 1.46 of the Commission’s rules, the Commission does not routinely grant extensions of time for filing comments.⁸ In this case, however, we find that a three-week extension to November 15, 2024, is warranted to enable commenters an opportunity to respond to the issues presented in the *TCPA AI NPRM & NOI*. We believe this extension is adequate to serve the public interest by enabling interested parties an opportunity to prepare more complete reply comments to inform the Commission’s deliberation in this matter.

6. 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 0.141, 0.361, and 1.46 of the Commission’s rules, 47 CFR §§ 0.141, 0.361, and 1.46, the Motion for Extension of Time to File Reply Comments filed by the Joint Petitioners is GRANTED IN PART.

7. IT IS FURTHER ORDERED that the date to file reply comments in this proceeding IS EXTENDED to **November 15, 2024**.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark
Chief, Consumer and Governmental Affairs Bureau

⁶ *Id.* at 1-2 (noting that the intervening Columbus Day holiday further reduced the time available to prepare reply comments).

⁷ *Id.* at 2.

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 fpc.gov)
TTY: (202) 418-2555

DA No. 24-1102

Friday, October 25, 2024

Report No. SAT-01866

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-20241001-00211 = S3092 Astranis Projects USA LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/18/2024

On October 18, 2024, the Satellite Programs and Policy Division granted, with conditions, Astranis Projects USA LLC's request for special temporary authority for up to 60 days to conduct telemetry, tracking and command (TT&C) operations to support drift of the Astranis space station from the 78° E.L. orbital location to the 80.9 W.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-20241009-00226 = S3912 Planet Labs PBC
Special Temporary Authority
Grant of Authority

Effective Date: 10/23/2024

On October 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for an additional period of up to 60 days to operate its Pelican-1 satellite in the 2020-2025 MHz frequency band (Earth-to-space) using different duty cycles than specified in its license.

SAT-STA-20241014-00227 = S3182 Spire Global, Inc.
Special Temporary Authority
Grant of Authority

Effective Date: 10/23/2024

On October 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Spire Global, Inc. for an additional period of up to 30 days for the Hubble 1, Hubble 2, and Hubble 3 satellites operating in the 3482-3485/3-3483-424 MHz band from the three "Hubble Endpoints" specified in the grant of special temporary authority, rather than the earth station specified in Spire's license for the Hubble satellites.

INFORMATIVE

SAT-AMD-20241017-00228 = S3069 Space Exploration Holdings, LLC

On October 24, 2024, the Satellite Programs and Policy Division granted the request of Space Exploration Holdings, LLC to designate the above-captioned application as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications. We find that designating this application as "permit-but-disclose" will facilitate resolution of the complex policy issues raised by the application. Thus, we designate the above-captioned application as "permit-but-disclose," effective October 24, 2024. See 47 CFR §§ 1.1200(s), 1.1200 and 1.1200 note 3. This action is without prejudice to any determination regarding the processing of the application.

SAT-AMD-20241011-00224 = S3069 Space Exploration Holdings, LLC

INFORMATIVE

On October 24, 2024, the Satellite Programs and Policy Division granted the request of Space Exploration Holdings, LLC to designate the above captioned application as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications. We find that designating this application as "permit-but-disclose" will facilitate resolution of the complex policy issues raised by the application. Thus, we designate the above-captioned application as "permit-but-disclose," effective October 24, 2024. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2. This action is without prejudice to any determination regarding the processing of the application.

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5323

DA 24-1103

Released: October 25, 2024

WIRELESS TELECOMMUNICATIONS BUREAU, OFFICE OF ENGINEERING AND TECHNOLOGY, AND SPACE BUREAU REMIND GRANDFATHERED FIXED SATELLITE SERVICE EARTH STATION LICENSEES TO SUBMIT ANNUAL REGISTRATION UPDATES BY DECEMBER 2, 2024

GN Docket No. 17-258

By this Public Notice, the Wireless Telecommunications Bureau, Office of Engineering and Technology, and the Space Bureau (the Bureaus) remind grandfathered Fixed Satellite Service (FSS) earth station licensees that are qualified for protection from Citizens Broadband Radio Service operations under section 96.17 of the Commission's rules of their annual registration requirements.¹ *All registrations must be renewed annually by December 2, 2024, for the registration to be valid at the beginning of next year, January 1, 2025.*² Registrations must be submitted via the 3.5 GHz FSS Database.³

After January 1, 2025, registrations that have not been completed may be deactivated or deleted, and the site will no longer merit protection by the Spectrum Access System (SAS) administrators. Consistent with established policy, the Bureaus will continue to accept late-filed registrations and renewals, including registrations submitted after deactivation, and the SAS administrators will reinstate protections as soon as reasonably practicable after filing.⁴

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).

¹ See 47 CFR § 96.17.

² "FSS earth station licensees requesting protection under this part must register with the Commission annually, no later than 30 days before the end of the preceding calendar year, or upon making changes to any of the operational parameters listed in this section. Registration information shall be made available to all approved SASs." 47 CFR § 96.17(d). This includes information required by the Commission's rules as well as additional information necessary to ensure that SASs can appropriately protect registered FSS earth stations. "Annual registration for each earth station shall include, at a minimum: (i) The earth station's geographic location (Using NAD83 coordinates); (ii) Antenna gain; (iii) Azimuth and elevation antenna gain pattern; (iv) Antenna azimuth relative to true north; and (v) Antenna elevation angle. (vi) Whether the earth station is used for satellite telemetry, tracking, and control (for earth stations in the 3700-4200 MHz band)." 47 CFR § 96.17(d)(1).

³ See *Wireless Telecommunications Bureau, Office of Engineering and Technology, and International Bureau Announce the Initial Filing Window and Procedures for Registration of Fixed Satellite Service Earth Stations Entitled to Protection from 3.5 GHz Citizens Broadband Radio Service*, GN Docket No. 17-258, Public Notice, 33 FCC Rcd 6033 (WTB/OET/IB 2018); see also 47 CFR § 96.17.

⁴ See *Wireless Telecommunications Bureau, Office of Engineering and Technology, and International Bureau Announce Procedures for Registration of Fixed Satellite Service Earth Stations Entitled to Protection from the 3.5 GHz Citizens Broadband Radio Service*, GN Docket No. 17-258, Public Notice, 32 FCC Rcd 10419, 10421 (WTB/OET/IB 2017).

Additional Information. For further information regarding this Public Notice, please contact Paul Powell, Associate Chief, Wireless Telecommunications Bureau, Mobility Division at paul.powell@fcc.gov or 202-418-1613; Navid Golshahi, Electronics Engineer, Office of Engineering and Technology, Electromagnetic Compatibility Division at navid.golshahi@fcc.gov or 202-418-2422; or Gregory Coutros, Associate Division Chief, Earth Station Licensing Division, Space Bureau, at gregory.coutros@fcc.gov or 202-418-2351.

Customers with questions regarding filing registrations may contact the FCC Licensing Support via the web at <https://www.fcc.gov/wireless/available-support-services>, or by telephone at 877-480-3201 (select option #2). The support hours of operation are 8 a.m. to 6 p.m. EST, Monday through Friday (except Federal holidays).

By the Chief, Wireless Telecommunications Bureau, the Acting Chief, Office of Engineering and Technology, and the Chief, Space Bureau.

-FCC-

In the Matter of)
)
Modernizing the E-Rate Program for) WC Docket No. 13-184
Schools and Libraries)
)

Released: October 25, 2024

11639

Wi-Fi Hotspot Report and Order.⁶ The proposed revisions included revising the description of Category One “wireless” service and making several clarifications in Eligibility Explanations section.⁷ We sought comment on the proposed revisions and on the draft eligible services list for funding year 2025.⁸ The comment cycle for the *Funding Year 2025 Eligible Services List Public Notice* closed on September 16, 2024.⁹ During the comment cycle, we received five comments and five reply comments.¹⁰

B. Discussion

4. Having considered the record, we adopt the final eligible services list for funding year 2025, attached as Appendix B to this Order.¹¹ The final eligible service list adopts the draft eligible services list for funding year 2025 list with the addition of a new note for Category One services.¹² Specifically, we revise the description of “wireless” service under Category One to read “Wireless (e.g., fixed wireless; microwave; mobile service for use on school buses; or mobile service for use with Wi-Fi hotspots).”¹³ We add a new note that basic technical support, software upgrades, bug fixes, and security patches are eligible for school bus Wi-Fi network equipment as requested by Los Angeles Unified School District (Los Angeles Unified).¹⁴ We also amend the explanation of “Wireless services and wireless Internet access” to note the eligibility of off-premises use of Wi-Fi hotspots and mobile wireless Internet services.¹⁵ We clarify the eligibility of off-campus wireless service on a school bus.¹⁶ We also clarify the requirement of cost allocation of certain off-campus use of E-Rate-funded services and explain that the cost-effectiveness test for data plans and air cards applies only to on-campus use.¹⁷

5. We remind applicants that the eligible services list process “is limited to determining what services are eligible under the Commission’s current rules and is generally not intended to be a vehicle for changing any eligibility rules.”¹⁸ Accordingly, we decline to address Los Angeles Unified’s request that we expand the E-Rate program’s eligibility to include mobile services for off-premises use

⁶ See *Funding Year 2025 Eligible Services List Public Notice* at 1-2 (citing *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76, 2024 WL 3617369 (FCC rel. July 29, 2024) (*Wi-Fi Hotspots Report and Order*)).

⁷ *Funding Year 2025 Eligible Services List Public Notice* at 1.

⁸ See *id.* at 2.

⁹ *Id.* at 1.

¹⁰ *Infra*, Appendix A (identifying the commenters and the acronyms used herein to refer to the commenters). Maurine and Matthew Molak filed their comments after the applicable deadline, and we will treat their submission as an *ex parte*.

¹¹ *Infra*, Appendix B.

¹² *Funding Year 2025 Eligible Services List Public Notice* at 4-8 (providing the draft eligible services list for funding year 2025).

¹³ See *infra*, Appendix B, at 7.

¹⁴ See *id.* See also Los Angeles Unified Comments at 2.

¹⁵ See *infra*, Appendix B, at 7.

¹⁶ See *id.*

¹⁷ See *id.* at 11.

¹⁸ See, e.g., *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Public Notice, 24 FCC Rcd 7422, 7423 (WCB 2009); *Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program*, CC Docket No. 02-6, Public Notice, 26 FCC Rcd 8714, 8718 (WCB 2011); *In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, Order, 28 FCC Rcd 14583, 14588, para. 13 & n.37 (WCB 2013).

when the service is not delivered to a Wi-Fi hotspot device (e.g., when the service is delivered directly to a Wi-Fi-enabled Chromebook) and the Molaks' request that we not update the FY 2025 Eligible Service List to include wireless service for use with Wi-Fi hotspots as outside the scope of this proceeding.¹⁹ We also decline to address requests from Los Angeles Unified and SECA that we make advanced or next generation firewall services eligible as E-Rate Category Two services²⁰ and SECA's request that we "encourage[]" certain E-Rate program applicants to purchase advanced firewalls using their E-Rate Category Two funds.²¹ In declining to address these requests, we note that E-Rate's eligibility rules for basic firewall services are unchanged for funding year 2025.²² While we decline to address these requests in the current proceeding, we note that the Commission is studying the use of Universal Service Fund (USF) support for the purchase of cybersecurity services and equipment, in its separate Schools and Libraries Cybersecurity Pilot (Pilot) program.²³ Given the ongoing Pilot program, we also decline to

¹⁹ See Los Angeles Unified Comments at 2; Letter from Maurine and Matthew Molak, to Marlene H Dortch, Secretary, FCC, WC Docket No. 13-184 (Oct. 8, 2024). Los Angeles Unified and the Molaks' requests are both outside the scope of this proceeding and are part of a separate open proceeding. See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-84, Order, 30 FCC Rcd 9923, 9931, para. 23 (WCB 2015) (declining to address requested changes to the eligible services list due to the complexity of the issues and being outside the scope of the proceeding); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 31 FCC Rcd 9767, 9769, para. 8 (WCB 2016) (same); see also *Petition for Reconsideration of Action in Proceeding*, Rep. No. 3215, Public Notice, 2024 WL 3665311 (FCC rel. Aug. 2, 2024) (seeking comment on the Molaks' Petition for Reconsideration in the *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31 proceeding); *Petitions for Reconsideration of Action in Proceeding*, Rep. No. 3219, 2024 WL 4330056 (FCC rel. Sep. 24, 2024) (seeking comment on Los Angeles Unified's Petition for Reconsideration in the *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31 proceeding).

²⁰ Los Angeles Unified Comments at 1-2; SECA Comments at 2, 4. The Commission has previously declined to make advanced and next-generation firewall features eligible for E-Rate support. See, e.g., *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order 25 FCC Rcd 18762, 18808-09, para. 105 (2010) (*Sixth Report and Order*) (continuing to fund basic firewall protection but declining to extend E-Rate support to anti-virus and anti-spam software, intrusion protection and intrusion protection. The Commission declined to extend E-Rate support beyond basic firewall protection that is included as part of an Internet access service explaining that it "must balance the benefits of such protections with the costs of augmenting our list of support services" and determining that the financial impact on the USF weighs against funding these services); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8917-18, paras. 120-121 (2014) (finding that basic firewall services are an eligible Category Two service and allowing separately priced basic firewall services and components to be eligible for funding, but declining to designate other network security services such as intrusion protection/detection, malware, etc. as eligible Category Two services); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11236-37, para. 46 & n.123 (2019) (declining to make advanced and next generation firewalls eligible for E-Rate Category Two support).

²¹ SECA Comments at 2, 4. In declining to address this request, we note that it is both outside the scope of the current proceeding and premised on an incorrect view that advanced firewalls are eligible in the E-Rate program under Category Two services. They are not. See *supra* note 20..

²² Basic firewall service is eligible in E-Rate as a Category One service if the firewall service is provided as part of the vendor's Internet access service and separately-priced basic firewall services and components are eligible as a Category Two service subject to the applicants' five-year Category Two budget. See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 37 FCC Rcd 14615, 14622, 14625 (WCB Dec. 14, 2022) (*FY 2023 ESL Order*).

²³ See *Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Report and Order, FCC 24-63, 2024 WL 3010578 (WCB June 11, 2024) (*Cybersecurity Pilot Program Report and Order*). We confirm that E-Rate's eligibility criteria for basic firewalls remain unchanged in view of the Pilot program's separate eligibility criteria for funding of advanced and next-generation firewall equipment and services. See SECA Comments at 3-4 (citing *Cybersecurity Pilot Program Report and Order*, Appendix B (identifying eligible equipment and services for (continued....)

address SECA's request that we "expressly expand the definition" of basic firewalls in E-Rate to include additional features.²⁴

6. A number of commenters additionally request that we state, or otherwise clarify, that standalone domain name system (DNS) and dynamic host configuration protocol (DHCP) services are E-Rate eligible, either as Category Two services,²⁵ as both Category One and Category Two services,²⁶ or without specifying a proposed categorization.²⁷ We decline to implement these requests to the extent that they alter existing E-Rate eligibility rules and confirm that the eligibility of DNS and DHCP is unchanged for funding year 2025.²⁸ DNS and DHCP are eligible as Category One services "when these features are provided as a standard component of a vendor's Internet access service."²⁹ There is no change in the eligibility treatment of these services for funding year 2025.

III. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, 303(r), and 403, sections 0.91 and 54.502 of the Commission's rules, 47 CFR §§ 0.91 and 54.502, this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page) _____

the Pilot program) and questioning whether the Pilot proceeding implicitly disturbs or modifies the set of equipment and services that have traditionally been eligible in E-Rate).

²⁴ SECA Comments at 4.

²⁵ FFL Comments at 1-2; FFL Reply Comments at 1; Carahsoft Reply Comments.

²⁶ Infoblox Comments at 1; ePlus Comments; Cybersecurity Coalition Comments at 2.

²⁷ Netsync Comments.

²⁸ See *infra*, Appendix B, at 11 (addressing the eligibility of "domain name service" and "dynamic host configuration" when these features are provided as a standard component of a vendor's Internet access service).

²⁹ *Id.*

APPENDIX A**List of Commenters****Comments and Reply Comments in Response to the
*Funding Year 2025 Eligible Services List Public Notice*****WC Docket No. 13-184****Commenters**

1. California Public Utilities Commission (CPUC)
2. Funds For Learning, LLC (FFL)
3. Infoblox Inc. (Infoblox)
4. Los Angeles Unified School District (Los Angeles Unified)
5. State E-rate Coordinators Alliance (SECA)

Reply Commenters

1. Carahsoft Technology Corp. (Carahsoft)
2. Cybersecurity Coalition
3. FFL
4. Joe Mauck/ePlus (ePlus)
5. Netsync Network Solutions (Netsync)

Ex Partes or Late Filed Comments

1. Cybersecurity Coalition
2. FFL
3. Maurine and Matthew Molak

APPENDIX B**Eligible Services List for Funding Year 2025
Schools and Libraries Universal Service Support Mechanism****WC Docket No. 13-184**

The Federal Communications Commission's (FCC) rules provide that all services that are eligible to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-Rate program or E-Rate) are listed in this Eligible Services List (ESL). 47 CFR § 54.502(a). The E-Rate program is administered by the Universal Service Administrative Company (USAC). 47 CFR § 54.5. Eligible schools and libraries may seek E-Rate support for eligible Category One telecommunications services, telecommunications, and Internet access, and Category Two internal connections, basic maintenance, and managed internal broadband services as identified herein. 47 CFR §§ 54.500 *et seq.*

Additional guidance from USAC about the E-Rate application process and about eligible services, including a glossary of terms, is available at USAC's website at <https://www.usac.org/erate/applicantprocess/before-you-begin/eligible-services-list/>. The documents on USAC's website are not incorporated by reference into the ESL and do not bind the Commission. Thus, they will not be used to determine whether a service or product is eligible. Applicants and service providers may refer to those documents, but they should do so only for informal guidance. This ESL applies to funding requests for Funding Year (FY) 2025.

Category One

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Eligible Category One services are listed in the entries for data transmission and/or Internet access. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. With the exception of leased dark fiber and self-provisioned broadband networks, maintenance and technical support appropriate to maintain reliable operation are only eligible for support when provided as a component of these services.

Data Transmission and/or Internet Access

Data transmission and/or Internet access services are eligible in Category One. These services include:

- Asynchronous Transfer Mode (ATM)
 - Broadband over Power Lines
 - Cable Modem
 - Digital Subscriber Line (DSL)
 - DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
 - Ethernet
 - Integrated Services Digital Network (ISDN)
- Note:* Dedicated voice channels on an ISDN circuit are no longer eligible.
- Leased Lit Fiber
 - Leased Dark Fiber (including dark fiber infeasible rights of use (IRUs) for a set term)
 - Self-Provisioned Broadband Networks (applicant owned and operated networks)
 - Frame Relay
 - Multi-Protocol Label Switching (MPLS)
 - OC-1, OC-3, OC-12, OC-n
 - Satellite
 - Switched Multimegabit Data Service
 - Telephone dial-up
 - Wireless (e.g., fixed wireless; microwave; mobile service for use on school buses; or mobile service for use with Wi-Fi hotspots)

Notes:

- (1) Eligible costs include monthly charges, special construction, installation and activation charges, software, modulating electronics and other equipment necessary to make a Category One wired or wireless broadband service functional ("Network Equipment"), and maintenance and operation charges, including costs for software needed for the operation of or maintenance of Network Equipment. Network Equipment and maintenance and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid.
- (2) Applicants that seek bids for leased dark fiber must also seek bids for leased lit fiber service and fully consider all responsive bids. Similarly, applicants that seek bids for self-provisioned broadband networks must also seek bids for the needed connectivity via services provided over third-party networks, and fully consider all responsive bids.
- (3) Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities. The eligible components of special construction are construction of network facilities, design and engineering, and project management.
- (4) Staff salaries and labor costs for personnel of the applicant or underlying beneficiary are not E-Rate eligible.
- (5) Consulting services that are not related to the installation and configuration of the eligible components are not eligible. These include services related to application assistance, program advice, and other activities not tied directly to actual installation and initial configuration of components.
- (6) Basic technical support (i.e., software updates including bug fixes and security patches, and remote technical support) appropriate to maintain reliable operation of school bus network equipment is eligible for support.

Category Two

The second category of equipment and services eligible for E-Rate support, Category Two, includes the internal connections needed for broadband connectivity within schools and libraries. Support is limited to the internal connections necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus (as defined below in the section titled “Eligibility Explanations for Certain Category One and Category Two Services”) or library branch, and basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Category Two support is subject to district- or library system-wide budgets as set forth in 47 CFR § 54.502. The eligible components and services in Category Two are:

Eligible Broadband Internal Connections

- Antennas, connectors, and related components used for internal broadband connections
- Cabling
- Caching
- Firewall services and firewall components separate from basic firewall protection provided as a standard component of a vendor’s Internet access service
- Racks
- Routers
- Switches
- Uninterruptible power supply (UPS)/battery backup
- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Wireless controller systems
- Software supporting the components on this list used to distribute high-speed broadband throughout school buildings and libraries (applicants should request software in the same category as the associated service being obtained or installed)

Notes:

- (1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.
- (2) A manufacturer’s multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.
- (3) Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.
- (4) Applicants may request both equipment and the software necessary to use the equipment on the FCC Form 470, or request just the equipment on the FCC Form 470, and still receive support for both the equipment and the software necessary to use the equipment (e.g., right-to-use software or client access licenses) by requesting the equipment and software either together or separately on the FCC Form 471. However, software upgrades and patches, including bug fixes and security patches, are considered basic maintenance of internal connections, and as such, applicants should seek bids for basic maintenance of internal connections if they intend to request funding for these services.

Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-Rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation, and initial configuration of eligible components and on-site training on the use of eligible equipment.
- In some eligible managed internal broadband services models, the third-party manager owns and installs the equipment and school and library applicants lease the equipment as part of the managed services contract. In other cases, the school or library may own the equipment, but have a third party manage the equipment for it.

Basic Maintenance of Eligible Broadband Internal Connections

E-Rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for eligible broadband internal connections.

The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware.
- Wire and cable maintenance.
- Configuration changes.
- Basic technical support including online and telephone-based technical support.
- Software upgrades and patches including bug fixes and security patches.

Eligibility Limitations for Category Two Services

Eligibility limitations for managed internal broadband services – The equipment eligible for support as part of a managed internal broadband service may include only equipment listed above as broadband internal connections. Upfront charges that are part of a managed service contract are eligible for E-Rate support except to the extent that the upfront charges are for any ineligible internal connections (e.g., servers other than those that are necessary to provide caching), which, if included in the contract, must be cost allocated out of any funding request.

Eligibility limitations for basic maintenance – Basic maintenance is eligible for support only if it is a component of a maintenance agreement or contract for eligible broadband internal connections. The agreement or contract must specifically identify the eligible internal connections covered, including product name, model number, and location. Support for basic maintenance will be paid for the actual work performed under the agreement or contract. Support for bug fixes, security patches, and technical support is not subject to this limitation.

Basic maintenance does not include:

- Services that maintain ineligible equipment
- Upfront estimates that cover the full cost of every piece of eligible equipment
- Services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information
- Network management services, including 24-hour network monitoring
- On-site technical support (i.e., contractor duty station at the applicant site), unless applicants present sufficient evidence of cost-effectiveness
- Unbundled warranties

Eligibility Explanations for Certain Category One and Category Two Services

National Security Supply Chain Restrictions – Equipment or services produced or provided by a company that the FCC has designated as a national security threat to the integrity of communications networks or the communications supply chain are not eligible for E-Rate support. 47 CFR § 54.9(a). In addition, participants are prohibited from using E-Rate support to purchase, rent, lease, or otherwise obtain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. 47 CFR § 54.10. A list of covered communications equipment and services can be found on the FCC’s website at <https://www.fcc.gov/supplychain/coveredlist> and will be updated to reflect any future determinations.

Internet access/ISP service – Eligible Internet access services may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor’s Internet access service. Firewall protection that is provided by a vendor other than the Internet access service provider or priced out separately will be considered a Category Two internal connections component. Examples of items that are ineligible components of Internet access services include applications, content, e-mail, and end-user devices and equipment such as computers, laptops, and tablets.

Wireless services and wireless Internet access – In accordance with the *Wi-Fi Hotspot Report and Order* (FCC 24-76), the off-campus use of Wi-Fi hotspots and mobile wireless Internet services is eligible for E-Rate support. Wi-Fi hotspots that are portable and a single device (i.e., not a set of linked devices) are eligible as Network Equipment as indicated in Note (1) under Category One.

As clarified in the *Wi-Fi on School Buses Declaratory Ruling* (FCC 23-84), the off-campus use of wireless service and the equipment needed to make this wireless service for school buses functional (e.g., antennas, routers, modems) is eligible for E-Rate support.

Outside of these delineated exceptions, in general, off-campus use of E-Rate-funded services even if used for an educational purpose, is ineligible for support, and must be cost-allocated out of any funding request.

In order for data plans and air cards for mobile devices for use on-campus (e.g., a bookmobile in a state where it is eligible for support as a library) to be eligible, the school or library seeking support must demonstrate that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries. Applicants should compare the cost of data plans or air cards for mobile devices to the total cost of all components necessary to deliver connectivity to the end user device, including the cost of data transmission and/or Internet access to the school or library. Seeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and WLAN implicates the E-Rate program’s prohibition on requests for duplicative services.

Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

Connections between buildings of a single school – The classification of connections between multiple buildings of a single school is determined by whether the buildings are located on the same campus. A “campus” is defined as the geographically contiguous grounds where the instructional buildings of a single eligible school are located. A single school may have multiple campuses if it has instructional buildings located on grounds that are not geographically contiguous. Different schools located on the same grounds do not comprise a single campus. The portion of the grounds occupied by the instructional buildings for each school is a campus for that school.

- Connections between buildings on different campuses of a single school are considered to be Category One data transmission services.
- Connections between different schools with campuses located on the same property (e.g., an elementary school and middle school located on the same property) are considered to be Category One data transmission services, unless they share the same building.
- Connections between buildings of a single school on the same campus are considered to be Category Two internal connections.

Network equipment with mixed eligibility – On-premises equipment that connects to a Category Two eligible LAN is eligible for Category One support if it is necessary to make a Category One broadband service functional. If the price for components that enable the LAN can be isolated from the price of the components that enable the Category One service, those costs should be cost-allocated out of the Category One funding request.

Miscellaneous

As described below, various miscellaneous services associated with Category One or Category Two are eligible for support. Applicants should request eligible miscellaneous services in the same category as the associated service being obtained or installed.

Fees

Fees and charges that are a necessary component of an eligible product or service are eligible, including:

- Change fees
- Contingency fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.
- Freight assurance fees
- Lease or rental fees on eligible equipment
- Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs
- Shipping charges
- Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. These types of charges include customer charges for universal service fees, but do not include additional charges for universal service administration.

Installation, Activation, and Initial Configuration

Installation, activation, and initial configuration of eligible components are eligible. These services may include:

- Design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training must occur coincidentally or within a reasonable time after installation.



DA 24-1105

Released: October 25, 2024

**DOMESTIC SECTION 214 APPLICATION GRANTED 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

By this Public Notice, the Wireline Competition Bureau grants, as conditioned below, 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) (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

On September 13, 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.

Nemont, a Montana cooperative association, provides services as a rural cooperative incumbent local exchange carrier (LEC).⁴ Nemont is designated as an eligible telecommunications carrier (ETC)⁵ and offers local telecommunications services and high-speed Internet access services that serve Division 1 of the Study Area – the portion of the Study Area that includes customers served by the Ambrose, Fortuna, and East Westby Exchanges.⁶ Nemont elected to receive model-based universal service support through the Alternative Connect America Cost Model II (A-CAM II).⁷

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. 24-268 (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 *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, Public Notice, DA 24-944 (WCB 2024).

⁴ Application at 2, 3.

⁵ *Id.* at 11.

⁶ Application at 4, 8.

MVC, a North Dakota corporation and a wholly-owned subsidiary of Nemont, provides services as a rural incumbent LEC corporation.⁸ MVC is designated as an ETC and offers local telecommunications and high-speed Internet access services that serve Division 2 – the portion of the Study Area that includes customers served by the Williston Exchange.⁹

NCC, a North Dakota cooperative association, provides services as a rural incumbent LEC.¹⁰ NCC is designated as an ETC¹¹ and 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.¹² Applicants state that NCC did not elect to receive model-based universal service support and receives cost-based support.¹³ NCC is owned by its member-subscribers, with no individual holding more than 10% of the equity interest in NCC.¹⁴ NCC's Board of Directors controls NCC, and all of the Board members are U.S. citizens.¹⁵

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.¹⁶ The Study Area is comprised of two "divisions."¹⁷ 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).¹⁸ The result of the proposed transaction would be that the Study Area will become part of NCC's service area and, post-consummation, NCC will provide services to customers in the Study Area.¹⁹

(Continued from previous page)

⁷ Application at 6; *see also Wireline Competition Bureau Announces Carriers That Have Accepted Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-920 (Oct. 4, 2023). Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

⁸ Application at 2, 3.

⁹ *Id.* at 8.

¹⁰ *Id.* at 2, 6.

¹¹ *Id.* at 11. NCC participates in the Lifeline program in North Dakota and state that it will do so in the Study Area once the transaction has been consummated and it receives ETC designation for the area. *Id.* at 12.

¹² *Id.* at 2, 8.

¹³ *Id.* at 11 (stating that NCC receives High-Cost Loop Support and Broadband Loop Support); *see also* Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

¹⁴ Application at 6.

¹⁵ *Id.*

¹⁶ *Id.* at 2, 7.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 7.

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.²⁰ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²¹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²²

At the outset, we address one potential harm arising from Applicants' request for approval to consummate a transaction involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction).²³ Specifically, NCC, which receives cost-based support,²⁴ is acquiring the Study Area from Nemont, which receives fixed support through the A-CAM II program.²⁵ The Commission has found that this type of transaction could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.²⁶ When a company receiving a fixed level of support acquires or is acquired by a company receiving support based on its costs, the combined companies could, and in some instances might have an economic incentive to, shift certain shared or common costs from the model-based support company to the cost-based support company.²⁷ If cost shifting were to occur, the combined company, post-transaction, could obtain more high-cost universal service support than the two companies did as separate entities, not because of any new investment, expense, or buildout, but rather

²⁰ See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

²¹ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

²² See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

²³ Application at 11-13.

²⁴ *Id.* (stating that NCC receives CAF-BLS, HLS, and CAF-ICC support in North Dakota) for Study Area Code (SAC) 320813).

²⁵ *Id.* at 11 (stating that Nemont has been authorized to receive A-CAM II support for SAC 382247).

²⁶ *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*).

²⁷ *Id.* at 4785-86, para. 20.

solely because of the application of accounting procedures.²⁸ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.²⁹ Moreover, providing additional universal service support to a company as a result of cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service resources.³⁰

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.³¹ The Commission has directed the Bureau to apply the *Hargray/ComSouth* condition where necessary to remedy a potential public interest harm caused by a mixed support transaction.³²

Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.³³ The combined operating expenses of the post-consummation company's rate-of-return affiliates³⁴ shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction's closing date for which the operating expense data are available.³⁵ This cap shall remain in effect for seven years from the consummation of

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 4786, para. 21.

³¹ *Id.* at 4788-90, paras. 26-31.

³² *Id.* at 4789 n.72 ("We direct the Bureau to apply the condition where necessary to remedy a potential public interest harm caused by a mixed support transaction."); see also *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859, 8864, para. 14 (2021) (reaffirming the Commission's delegation to the Bureau to continue to apply the mixed support condition where necessary).

³³ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31.

³⁴ See 47 U.S.C. § 153(2).

³⁵ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation company and any other existing rate-of-return affiliates that they may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in HCLS and CAF-BLS for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id.* at 4790, para. 31. The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS. For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10%, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10%. For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded. See *id.* at 4789, para. 28. For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel

(continued....)

the transaction.³⁶ The condition will sunset if all of a post-consumption company's rate-of-return affiliates become fixed model-based support companies at any point during the seven-year period.³⁷

We find that there are no other potential public interest harms identified in the record. The transaction will not result in a loss of a competitive provider in the markets in which the Applicants currently operate.³⁸ Further, Applicants 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."³⁹

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 assert that the proposed transaction would ensure 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.⁴³ Applicants claim that customers in the Study Area "will benefit from the resources and close network proximity of NCC" resulting in "efficiencies of scope and scale ... allowing for the more efficient and productive operation of both the service areas included in this transaction."⁴⁴ Moreover, Applicants aver that, post-consummation, "NCC will offer the same high-quality voice and broadband services that the Study Area customers receive today with planned network upgrades to allow the customers to receive higher broadband speeds and more capacity."⁴⁵

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,⁴⁶ and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.⁴⁷ In light of the Applicants' commitments to meet all of the

(Continued from previous page) —————

Price Index (GDP-CPI) for the years in which the new cap remains in effect. *Id.* at 4790, para. 30. NCC acknowledges its obligation to comply with the Hargray condition. Application at 12-13.

³⁶ The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Hargray/ComSouth Order*, 33 FCC Rcd at 4789-90, para. 29 n.78.

³⁷ *Id.* at 4789-90, para. 29.

³⁸ Application at 2, 11.

³⁹ *Id.* at 10.

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 10.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

⁴⁷ See *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services"))).

Lifeline USF obligations⁴⁸ and the fact that Applicants are prepared to enhance Transferors' facilities-based service offerings,⁴⁹ we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Grant of Application

We find, upon consideration of the record, that grant of the Application listed above will serve the public interest, convenience, and necessity.⁵⁰ 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 compliance with the condition described above.⁵¹

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 Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, at dennis.johnson@fcc.gov.

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⁴⁸ Application at 12.

⁴⁹ *Id.* at 10.

⁵⁰ See 47 U.S.C. § 214(a); 47 CFR § 63.03. Applicants note that there is an adjacency of service areas between Transferors and NCC. Application at 9. We conclude that there will be efficiencies that result from these adjacent exchanges and find the proposed transaction in the public interest. See *Joint Applications of Global Crossing Ltd. and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, File Nos. ITC-T/C-20000828-00530, CCB Pol No. 00-1 20001005AD-09 0000209675 et al., Memorandum Opinion and Order, 16 FCC Rcd 8507, 8510-11, paras. 7-9 (CCB, IB, CSB, WTB 2001) (granting transfer of control involving incumbent LECs with adjacent exchanges where merger would provide service efficiencies); *Applications of Level 3 Communications, Inc. and CenturyLink for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9606, para 54 (2017) (finding that the transaction would advance the public interest by expanding the reach and service capacity of the combined entity).

⁵¹ Within 30 days of closing the proposed transactions, NCC must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal service recipients. In addition, we direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.



PUBLIC NOTICE

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

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

DA 24-1106
Released: October 28, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF UNION RIVER TELEPHONE COMPANY D/B/A RIVAH.NET TO DIRECT COMMUNICATIONS ROCKLAND, INC.

WC Docket No. 24-282

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

On September 26, 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.

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.⁴ 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.⁵ 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.⁶ Union River, a

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

² See Domestic Section 214 Application to Transfer 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 supplements to the Application on September 18, 2024 and October 2, 2023. 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) (Sept. 18 Supplement); 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 Oct. 2, 2024) (Oct. 2 Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Union River Telephone Company d/b/a Rivah.Net to Direct Communications Rockland, Inc.*, WC Docket No. 24-282, Public Notice, DA 24-1001 (WCB 2024).

⁴ Application at 2, 4, 6.

⁵ *Id.* at 6.

⁶ *Id.*

designated Eligible Telecommunications Carrier (ETC), currently receives model-based high-cost universal service fund support through the Alternative Connect America Cost Model (A-CAM) II support mechanism in the state of Maine.⁷

DCR,⁸ an Idaho corporation and incumbent LEC, provides telecommunications and broadband services in Idaho.⁹ DCR wholly owns the following entities: Star Telephone Company, Inc. (Star), a 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 (Rico), 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.¹⁰ UniTel, a rural incumbent LEC, provides telecommunications services to approximately 2,855 access lines in Kennebec, Penobscot, and Waldo Counties in central Maine.¹¹ UniCap, a reseller of interexchange long distance services, provides services in the service area of UniTel.¹² DCR, Star, and UniTel, all ETCs, currently receive cost-based high-cost universal service fund support through the Connect America Fund Broadband Loop Support (CAF-BLS) and High-Cost Loop Support (HCLS) support mechanisms.¹³ Also, DCCV and Rico, both ETCs, currently receive model-based high-cost universal service fund support through the Enhanced A-CAM support mechanism.¹⁴

Pursuant to the terms of the proposed transaction, DCR proposes to acquire, through transfer of control, all the operations and assets of Union River.¹⁵ 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.¹⁶ Applicants also state that Union River will continue to exist and operate under

⁷ *Id.* at 11-12; *see* Wireline Competition Bureau, CAF - A-CAM 2.5.2 - Authorization Report 6.2 (2022), <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx> (summarizing authorized A-CAM II support amounts and deployment obligations). Union River also participates in the Lifeline program and will continue to do so post-consummation of transaction. Application at 11.

⁸ DCR is wholly owned by Direct Management Company, LLC (DMC), an Idaho limited liability company, by means of common stock voting interest. *Id.* at 4. DMC's Members have an indirect interest in DCR by and through their DMC membership. *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 Sept. 18 Supplement. The DMC Members are the following U.S. citizens: Timothy May, President/Manager of DCR's Board of Directors (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%). Application at 4-5, Exh. B.

⁹ *Id.* at 2, 4.

¹⁰ *Id.* at 4, 7-8.

¹¹ *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 Sept. 18 Supplement.

¹² Application at 8.

¹³ *Id.* at 10-11; *see* High Cost Projected by State by Study Area, Q42024, <https://www.usac.org/about/reports-orders/fcc-filings/>, DCR, Star, and UniTel also participate in the Lifeline program. Application at 11.

¹⁴ *Id.* at 10-11; *see* Enhanced ACAM Authorization Report, Version 1 (2023), <https://www.fcc.gov/document/enhanced-cam-authorization-report> (summarizing authorized Enhanced ACAM support amounts and deployment obligations). DCCV and Rico also participate in the Lifeline program. Application at 11.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

its existing corporate structure.¹⁷

Applicants submit that competition will not be substantially harmed by the proposed transactions in that competitors have a presence in the subject service areas.¹⁸ Applicants also assert that the efficiencies of scope and scale generated by the transaction will create public interest benefits.¹⁹ Further, Applicants aver that Union River'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 to customers.²⁰ Indeed, Applicants state that "any future name change or service changes will be preceded by appropriate notices to customers and required regulatory filings."²¹ Finally, Applicants contend that none of the foregoing direct and indirect interests held by DCR overlap with any service areas or fiber facilities of Union River.²² Applicants have acknowledged the continuing applicability of the mixed support condition first applied in the *Hargray/ComSouth Order*.²³ Accordingly, Applicants affirm that the proposed transaction is consistent with the public interest, convenience, and necessity.²⁴

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.²⁵ 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 DCR's compliance with the condition described above.²⁶

¹⁷ *Id.*

¹⁸ *Id.* at 9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 8, 10, 12.

²³ Oct. 2 Supplement at 2. In the *Hargray/ComSouth Order*, the Commission found that "the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed efficiently and effectively" as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of 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*); see *Domestic Section 214 Application Granted Subject to Condition*, Public Notice, WC Docket No. 21-460, 37 FCC Rcd 408, 409-11 (WCB 2022) (*DCR-UniTek Public Notice*) (granting the transfer of control of UniTek to DCR, subject to the condition in the *Hargray/ComSouth Order* because the transaction involved the transfer of UniTel, a cost-based support company, to DCR, a company that receives both fixed model-based and cost-based support). Following consummation of the proposed transaction, Union River, which is a recipient of model-based universal service support, will be owned by DCR and affiliated with other companies through DCR that receive universal service support under the different mechanisms of fixed model-based support and cost-based support. Application at 10, 12; Oct. 2 Supplement at 1-2. Similar to other transactions, including the DCR-UniTek transaction, involving affiliates that receive universal service 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 capping the combined operating expenses of the post-consummation company's rate of return affiliates. See *DCR-UniTek Public Notice*, 37 FCC Rcd at 410.

²⁴ Application at 8-10.

²⁵ See 47 U.S.C. § 214(a); 47 CFR § 63.03.

²⁶ Within 30 days of closing the proposed transactions, Applicants must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal

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

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

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service recipients. In addition, we direct Applicants to submit, in the domestic section 214 docket, WC Docket No. 24-282, 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.

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

In the Matter of

8x8, Inc. and Fuze, Inc.

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File No.: EB-IHD-23-00035749
CD Acct. No.: 202532080001
FRN: 0007099773
FRN: 0032188401

ORDER

Adopted: November 1, 2024**Released: November 1, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree with 8x8, Inc. (8x8), on behalf of its wholly owned subsidiary, Fuze, Inc. (Fuze or Company), to resolve the Bureau's investigation into 8x8's and Fuze's compliance with the Commission rules regarding Universal Service Fund contributions. To resolve this matter, Fuze agrees to implement a compliance plan and pay a civil penalty of three hundred thousand dollars (\$300,000).

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding 8x8's and Fuze's compliance with sections 54.706, 54.711(a) and 64.604,¹ of the Commission's rules.

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of 8x8's and Fuze's basic qualifications to hold or obtain any Commission license or authorization.²

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

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

¹ 47 CFR §§ 54.702, 54.706, 54.711, 64.604.

² See 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Samuel Wilson, Chief Executive Officer, 8x8, Inc., 675 Creekside Way, Campbell, CA 95008 and to Steven Fredley, Esq. and Owen Smith, Esq., HWG LLP, 1919 M Street NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
8x8, Inc. and Fuze, Inc.	)	File No.: EB-IHD-23-00035749
	)	CD Acct. No.: 202532080001
	)	FRN: 0007099773
	)	FRN: 0032188401
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and 8x8, Inc. (8x8), on behalf of its wholly owned subsidiary, Fuze, Inc. (Fuze or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into 8x8's and Fuze's compliance with applicable Commission rules. In particular, the Bureau investigated whether Fuze violated sections 54.706, 54.711(a), and 64.604¹ of the Commission's rules and whether it failed to respond timely or sufficiently to the Universal Service Administrative Company (USAC) directives to provide additional information and supporting documents to verify the accuracy of its 2023 annual Telecommunications Reporting Worksheet. To resolve this matter, Fuze agrees to implement a compliance plan and pay a civil penalty of three hundred thousand dollars (\$300,000).

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "8x8" means 8x8, Inc. and its predecessors-in-interest and successors-in-interest.
 - (b) "Act" means the Communications Act of 1934, as amended.²
 - (c) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "CD Acct No." means account number 202532080001, associated with payment obligations described in paragraph 16 of this Consent Decree.
 - (f) "Commission" and "FCC" mean 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 Fuze is subject by virtue of its business activities, including but not limited to the Universal Service Fund Rules.
 - (h) "Compliance Officer" means the individual identified at paragraph 11 of this Consent Decree as the person responsible for administration of the Compliance Plan.
 - (i) "Compliance Plan" means the compliance obligations, program, and procedures

¹ 47 CFR §§ 54.702, 54.706, 54.711(a), 64.604.

² 47 U.S.C. § 151 *et seq.*

described in this Consent Decree at paragraph 12.

- (j) “Covered Employees” means all employees and agents of Fuze who perform or directly supervise, oversee, or manage the performance of, duties that relate to Fuze’s responsibilities under the Communications Laws, including the Universal Service Fund Rules.
- (k) “Effective Date” means the date by which both the Bureau and 8x8 have signed the Consent Decree and the Bureau has released an Adopting Order.
- (l) “Fuze” or “Company” means Fuze, Inc. and its, predecessors-in-interest, and successors-in-interest.
- (m) “Investigation” means the investigation commenced by the Bureau in EB-IHD-23-00035749 regarding 8x8’s and Fuze’s compliance with the Communications Laws and Commission Rules.
- (n) “LOI” means the Letter of Inquiry issued by the Bureau to 8x8 and Fuze on November 17, 2023, in EB-IHD-23-00035749.
- (o) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Fuze to implement the Compliance Plan.
- (p) “Parties” means 8x8, Fuze, and the Bureau, each of which is a “Party.”
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (r) “Universal Service Fund Rules” means the Commission’s rules pertaining to federal funds compliance, funding, reporting, and documentation requirements described in sections 54.702, 54.706, 54.711 and 64.604,³ of the Rules.

II. BACKGROUND

3. *Legal Background.* Under the Communications Act of 1934, as amended (Act), and the rules and orders of the Commission, telecommunications carriers providing interstate telecommunications services, and certain other interstate telecommunications providers (collectively, Service Providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with USAC in furtherance of the Commission’s universal service and other federal payment requirements implemented under the Act.⁴ USAC relies on information filed in the Worksheets to determine, as prescribed in the Commission’s rules, each Service Provider’s equitable contributions responsibilities for the Universal Service Fund (USF).⁵ To ensure that the information submitted to USAC by Service Providers is complete, timely, and accurate, the Commission’s rules grant USAC the authority to verify any information contained in Annual and Quarterly Worksheets.⁶ The Commission’s rules warn Service Providers that the failure to file timely and accurate Worksheets potentially subjects them to enforcement action.⁷

³ 47 U.S.C. § 254(d); 47 CFR §§ 54.702, 54.706, 54.711, 64.604.

⁴ 47 U.S.C. § 254(d).

⁵ *Wireline Competition Bureau Releases the 2023 Telecommunications Worksheets & Accompanying Instructions, Public Notice*, 37 FCC Rcd 12124, 12183-84 (WCB 2022).

⁶ 47 CFR § 54.711(a); *see also id.* § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC).

⁷ 47 CFR § 54.713.

4. **Factual Background.** Fuze is a privately held Delaware corporation.⁸ Fuze offers unified communications as a service and contact center as a service to businesses.⁹ 8x8 is a publicly traded Delaware corporation.¹⁰ On January 18, 2022, 8x8 acquired Fuze, making Fuze a wholly owned subsidiary of 8x8.¹¹

5. Fuze failed to provide documentation to support its 2023 FCC Form 499-A, which was requested by USAC, until April 15, 2024.¹² To resolve this matter, the Parties enter into this Consent Decree and agree to the following terms and conditions as provided below.

III. TERMS OF AGREEMENT

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

7. **Jurisdiction.** On behalf of Fuze, 8x8 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 on behalf of Fuze.

8. **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.

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 consideration for the termination of the Investigation, 8x8, on behalf of Fuze, 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 8x8 or Fuze concerning the matters that were the subject of the Investigation.¹³

10. **Admission of Liability.** 8x8, on behalf of Fuze, admits, for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that Fuze's actions described in paragraph 5 of this Consent Decree violated the Universal Service Fund Rules.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, 8x8, on behalf of Fuze, 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 Fuze 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 Universal Service Fund Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, 8x8, on behalf of Fuze, agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a

⁸ See Response to Letter of Inquiry from Steven Fredly, Counsel for Fuze and 8x8, HWG LLP, to Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 3 (Feb. 14, 2024) (on file in EB-IHD-23-00035749) (*LOI Response*).

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² Letter of Appeal from Fuze to USAC (Apr. 15, 2024) (on file in EB-IHD-23-00035749).

¹³ See 47 CFR § 1.93(b).

Compliance Plan designed to ensure future compliance with the Universal Service Fund Rules, and the terms and conditions of this Consent Decree. The Compliance Plan will contain, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, 8x8, on behalf of Fuze, shall establish Operating Procedures that all Covered Employees must follow to help ensure compliance with the Universal Service Fund Rules. The Operating Procedures shall include internal procedures and policies specifically designed to ensure compliance with the Universal Service Fund Rules. 8x8, on behalf of Fuze, shall also develop a Compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Universal Service Fund Rules.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Universal Service Fund Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Fuze complies with the Universal Service Fund Rules. 8x8, on behalf of Fuze, shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. 8x8, on behalf of Fuze, shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** 8x8, on behalf of Fuze, shall establish and implement a Compliance Training Program on compliance with the Universal Service Fund Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Fuze's obligation to report any noncompliance with the Universal Service Fund Rules under paragraph 13 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. 8x8, on behalf of Fuze, 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.

13. **Reporting Noncompliance.** 8x8, on behalf of Fuze, shall report any noncompliance with the Universal Service Fund Rules and with the terms and conditions of this Consent Decree that substantially impacts USAC's ability to determine Fuze's USF contributions responsibilities within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that 8x8 or Fuze 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 8x8 or Fuze has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Bureau at IHDTelecom@fcc.gov.

14. **Compliance Reports.** 8x8, on behalf of Fuze, shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Fuze's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Universal Service Fund Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of 8x8 and Fuze, stating that the Compliance Officer has personal knowledge that

Fuze: (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 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁴
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of 8x8 and Fuze, 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 Fuze 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 Fuze has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to IHDTelecom@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11 through 14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

16. **Civil Penalty.** 8x8 and/or Fuze will pay a civil penalty to the United States Treasury in the amount of three hundred thousand dollars (\$300,000) within thirty (30) calendar days of the Effective Date. 8x8 and Fuze acknowledge and agree that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).¹⁵ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Fuze shall send electronic notification of payment to IHDTelecom@fcc.gov and EnforcementBureauIHD@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:¹⁶

- 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 159¹⁷ or printed CORES form¹⁸ 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

¹⁴ *Id.* § 1.16.

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

¹⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

¹⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁸ 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>.

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).¹⁹ 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.

17. **Event of Default.** 8x8 and Fuze agree that an Event of Default shall occur upon the failure by 8x8 and/or Fuze to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

18. **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 8x8 and Fuze.

19. **Waivers.** As of the Effective Date, 8x8 and Fuze waive any and all rights 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. 8x8 and Fuze shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither 8x8, Fuze, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and 8x8 and Fuze shall waive any statutory right to a trial *de novo*. 8x8 and Fuze hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act²⁰ relating to the matters addressed in this Consent Decree.

¹⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall 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 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 8x8, on behalf of Fuze, does not expressly consent) that provision will be superseded by such Rule or order.

23. **Successors and Assigns.** 8x8 and Fuze agree that the provisions of this Consent Decree shall be binding on their 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 without the advance written consent of both Parties.

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

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

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

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Laurence Denny
Chief Legal Officer
8x8, Inc., on behalf of Fuze, Inc.

Date



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1108

Released: November 1, 2024

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

CC Docket No. 02-6
WC Docket No. 02-60

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

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

Dismiss for Failure to Comply with the Commission's Basic Filing Requirements³

¹ See *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Section 54.719(b) of the Commission's rules 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 54.719(c) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR § 54.719(b)-(c). 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 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); see also *Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology; Request for Review by Alternative*

(continued....)

Sculptor Charter Schools, FL, Application Nos. 231038682, 241040347, 241040346, CC Docket No. 02-6 (filed Oct. 14, 2024)

Dismissed on Reconsideration⁴

TwinState Voice Data and Video (Lamoille North Modified Union School District), VT, Application No. 211034159, Petition for Reconsideration, CC Docket No. 02-6 (filed Jul. 30, 2024)

Dismissed to Allow Appeal to be Filed with USAC⁵

Avery-Mitchell-Yancey Library, NC, Application No. 221008016, Request for Review, CC Docket No. 02-6 (filed July 9, 2024)

Basis DC, DC, Application No. 241039790, Request for Waiver, CC Docket No. 02-6 (filed Oct. 14, 2024)

(Continued from previous page)

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).

⁴ 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).

Lamoille North Modified Union School District did not raise any arguments in its initial waiver for why its FCC Form 474 was filed late. On reconsideration, it now raises the argument that the billing manager had personal issues and subsequently left the job which contributed to the late filing of its invoices. 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 staff turnover does not constitute extraordinary circumstances that would allow a waiver of the invoice filing deadline rule. See *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*).

⁵ See *Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB 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 petitioners filed their appeals with the Commission first, we now provide them 60 days from the release date of this Public Notice to refile the appeals 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 appeals 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.

Computer Solutions (Bishop Consolidated Independent School District), TX, Application No. 221015371, Request for Review, CC Docket No. 02-6 (filed Sept. 10, 2024)

Granted⁶

*Discount Calculation*⁷

Orchard Place School, IA, Application No. 241027679, Request for Waiver, CC Docket No. 02-6 (filed Sept. 24, 2024)

Pendleton School District, OR, Application No. 241029171, Request for Waiver, CC Docket No. 02-6 (filed Sept. 11, 2024)

Tigard-Tualatin School District 23J, OR, Application Nos. 241006498, 241029041, 241031962, Request for Waiver, CC Docket No. 02-6 (filed Sept. 5, 2024)

*Eligible Services*⁸

Lebanon Community School District, OR, Application No. 241022745, Request for Waiver, CC Docket No. 02-6 (filed Aug. 28, 2024)

*Granting On Our Own Reconsideration – FCC Form 471 Tribal Library Delays*⁹

⁶ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the 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).

⁷ *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 and Tigard-Tualatin School District 23J. *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).

⁸ Remanding to USAC for eligibility determination consistent with the new evidence provided on appeal to the Commission. *See, e.g., Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8735, 8737-38, para. 6 (2007) (*Aiken County Public Schools Order*) (granting appeals where USAC incorrectly determined the funding requests were for ineligible services).

⁹ The Wireline Competition Bureau (Bureau) denied Chumash Library Learning Center's request to waive the FCC Form 471 deadline in the *October USF Streamlined Public Notice*. *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 06-122, Public Notice, DA 24-973 (WCB Oct. 1, 2024) (*October USF Streamlined Public Notice*). On our own motion, we now reconsider the Bureau's denial. *See* 47 CFR § 1.113(a) (allowing a bureau to set aside or modify its own actions within 30 days). Because the Bureau's decisions dismissing the petition was released 31 days ago, we waive the section 1.113 requirement that any *sua sponte* reconsideration of an action taken under delegated authority (continued....)

Chumash Library Learning Center, CA, Application No. 241040344, Request for Waiver, CC Docket No. 02-6 (filed Aug. 22, 2024)

*Invoice Deadline Extension*¹⁰

Capital Region BOCES, NY, Application No. 191001098, Request for Review, CC Docket No. 02-6 (filed Oct. 29, 2021)

*Late-Filed FCC Form 486*¹¹

Madison Parish Library, LA, Application Nos. 231030787, 231036626, Request for Review, CC Docket No. 02-6 (filed Sept. 5, 2024)

*Lowest Price Selected During Competitive Bidding*¹²

(Continued from previous page)

occur within 30 days of that action. *See, e.g., 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, DA 22-399, para. 11 (WCB Apr. 11, 2022) (*Archdiocese of San Antonio Order*); *Requests for Review of the Decision of the Universal Service Administrator by Pioneerland Library System; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Assoc.*, CC Docket Nos. 96-45, 97-21, Order on Reconsideration, 16 FCC Rcd 3428 (2001) (*Pioneerland Library System*) (waiving section 1.113 of the Commission's rules to permit the reconsideration of a more-than-30-day Bureau denial because it was warranted in that case). Because the Commission has recognized that the E-Rate process may be particularly challenging for Tribal libraries, we re-examine our initial decision. *See Schools and Libraries Universal Service Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, and 97-21, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56, at para. 38 (2023)) (*2023 Tribal Libraries Report and Order*) (noting that the Bureau, when considering requests for waiver of the FCC Form 471 application filing deadline, recognize the special circumstances that Tribal library applicants face when applying for the E-Rate program). In its second year applying for E-Rate funds, staff turnover issues at Chumash Library Learning Center led to the late-filed application. In light of the Commission's directive and Chumash Library Learning Center's circumstances, we find that a waiver of the FCC Form 471 application filing deadline is warranted. *See id.* (noting that staffing issues may present particularly challenges to Tribal libraries). Therefore, on our own motion, we reconsider our previous determination and grant Chumash Library Learning Center's waiver petition.

¹⁰ Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we grant this request for review. *See* 47 CFR § 54.723. We find that Capital Region BOCES timely filed its one-time invoice deadline extension, even though the Commission had automatically extended the deadline previously to provide relief to E-Rate program participants affected by the Covid pandemic. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 20-364, para. 8 (WCB Apr. 1, 2020) (*Covid Relief Order*). In this instance, we waive sections any procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. *See supra* note 6.

¹¹ *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).

¹² Granting waiver of price as primary factor rule where applicant selected lowest costing provider. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6115-17, paras. 10-12 (WCB 2011) (waiving the requirement that an applicant be able to demonstrate that it used price of
(continued....)

Hopi Jr/Sr High School District, AZ, Application Nos. 211000440, 221000458, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 1, 2024)

*Ministerial and/or Clerical Errors*¹³

Cameron Parish School District, LA, Application No. 241009123, Request for Waiver, CC Docket No. 02-6 (filed May 22, 2024)

*Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application*¹⁴

Brookline Public Schools, MA, Application No. 241024939, Request for Waiver, CC Docket No. 02-6 (filed Sept. 13, 2024)

Woodward Independent School District, OK, Application No. 241040049, Request for Waiver, CC Docket No. 02-6 (filed Sept. 30, 2024)

*Ministerial and/or Clerical Errors – Remand to USAC for Determination*¹⁵

Archer Public Library, TX, Application No. 241000425, Request for Waiver, CC Docket No. 02-6 (filed Sept. 6, 2024)

*Service Substitution*¹⁶

Casa Academy, TX, Application No. 241004979, Request for Waiver, CC Docket No. 02-6 (filed July 29, 2024)

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the eligible equipment/services as the primary factor in vendor selection when the applicant selected the lowest priced option and there was no evidence of waste, fraud or abuse). *See also* 47 CFR § 54.503(c)(2)(ii)(B); 54.511(a)

¹³ *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 (*Archer Public Library Order*) (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 petitioners then filed an FCC Form 471 application that was out of window. We direct USAC to add this funding request to the petitioner's timely-filed FY 2024 FCC Form 471 applications or treat the late-filed applications as timely filed.

¹⁵ *See supra* note 13. In its waiver request, Archer Public Library failed to submit documentation substantiating its claim that there was a ministerial and clerical error on its FCC Form 471. On remand, USAC should work with the applicant to determine whether it mistakenly requested the incorrect dollar amount on its application and make a judgement on the merits of Archer Public Library's claim. *See supra* note 6.

¹⁶ We grant Casa Academy's request for service substitution and deny its request for additional funding. We grant Illinois Department of Innovation and Technology Consortium's request to the extent that the legacy bandwidth is within in the scope of the controlling FCC Form(s) 470. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Beaufort County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 3124 (WCB 2014) (*Beaufort County School District Order*) (granting appeals of denied service substitution requests when the requested service substitution met the requirements for service substitutions currently codified in 47 CFR § 54.504(d) that (1) the service or product had the same functionality as the original service or product, (2) the substitution did not violate any contract provisions or state or local procurement laws, (3) the substitution did not result in an increase in the percentage of ineligible services or functions, and (4) the applicant certified that the requested change is within the scope of the controlling FCC Form 470).

Illinois Department of Innovation and Technology Consortium, IL, Application No. 221014508, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2024)

Steel City Academy, IN, Application No. 231031031, Request for Waiver, CC Docket No. 02-6 (filed Oct. 9, 2024)

*USAC Decision Issued After Invoice Deadline*¹⁷

Clark County District Library, ID, Application No. 221035281, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Concordia Parish Library, LA, Application No. 221025365, Request for Waiver, CC Docket No. 02-6 (filed Mar. 4, 2024)

Cullman City School District, AL, Application No. 211030522, Request for Waiver, CC Docket No. 02-6 (filed June 14, 2024)

Kipp Texas Public Schools, TX, Application No. 191030050, Request for Waiver, CC Docket No. 02-6 (filed Jan. 7, 2022)

Matrix Integration LLC (Sense Charter School), IN, Application No. 221027695, Request for Waiver, CC Docket No. 02-6 (filed Sept. 11, 2024)

Norwescap Head Start/Early Head Start, NJ, Application No. 221025347, Request for Waiver, CC Docket No. 02-6 (filed Feb. 22, 2024)

St. Joseph Community School, IA, Application No. 221034066, Request for Waiver, CC Docket No. 02-6 (filed June 11, 2024)

University Preparatory School, CO, Application No. 221039979, Request for Waiver, CC Docket No. 02-6 (filed Sept. 13, 2024)

Upper Bucks County Technical School, PA, Application No. 221010382, Request for Waiver, CC Docket No. 02-6 (filed June 14, 2024)

*Waiver of Appeal Filing Deadline*¹⁸

¹⁷ 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).

Consistent with precedent, we also waive the appeal filing deadline for University Preparatory School. See, e.g., *ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (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).

¹⁸ 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).

To correct problems with an invoice, Industry Systems, LLC worked with USAC personnel instead of filing an appeal request. After working with USAC staff for a considerable period of time, the school district was told to file
(continued....)

Central Point School District 6, OR, Application No. 241001491, Request for Waiver, CC Docket No. 02-6 (filed Aug. 19, 2024)

Industry Systems, LLC (Tuttle Independent School District 97), OK, Application No. 231020880, Request for Waiver, CC Docket No. 02-6 (filed Aug. 30, 2024)

Integrated IT Solutions (St. Mary Academy-Bay View), RI, Application No. 211038283, Request for Waiver, CC Docket No. 02-6 (filed July 22, 2024)

*Waiver of Special Construction Service Delivery Deadline*¹⁹

Socorro Consolidated School District, NM, Application No. 221022029, Request for Waiver, CC Docket No. 02-6 (filed Sept. 20, 2024)

Denied

*Competitive Bidding – No FCC Form 470 Filed*²⁰

Berks County Intermediate Unit 14, PA, Application Nos. 231005799, 231006201, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

*Late-Filed FCC Form 471 Applications*²¹

Keystone Learning Services, KS, Application No. 241040432, Request for Waiver, CC Docket

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an appeal, which was after the appeal filing deadline. Integrated IT Solutions also worked with USAC staff for a considerable period of time to correct problems with an invoice before filing a waiver.

We make no finding on the underlying issues in these appeals and remand these applications to USAC to make a determination on the merits. *See supra* note 6.

¹⁹ *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 Socorro Consolidated School District 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 6.

²⁰ *See* 47 CFR § 54.504(c) (stating that applicants must seek competitive bids for E-Rate eligible services by posting an FCC Form 470 and waiting 28 days before entering into a contract for services); *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8763, para. 10 (2007) (*Aberdeen School District Order*) (denying an appeal for an applicant that requested E-Rate program funds without posting a new FCC Form 470 for the services).

²¹ *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9261-62, para. 13 (2010) (*Academy of Math and Science Order*) (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying a waiver of the Commission's rules).

No. 02-6 (filed Sept. 13, 2024)

King Center Charter School, NY, Application No. 241040433, Request for Waiver, CC Docket No. 02-6 (filed Sept. 13, 2024)

Maria Montessori Charter Academy, CA, Application No. 241040457, Request for Waiver, CC Docket No. 02-6 (filed Sept. 25, 2024)

Miami County Educational Service Center, OH, Application No. 241040404, Request for Waiver, CC Docket No. 02-6 (filed Sept. 5, 2024)

Orlando Baptist Church d/b/a Orlando Christian Prep, FL, Application No. 241040429, Request for Waiver, CC Docket No. 02-6 (filed Sept. 10, 2024)

*Late-Filed Invoice or Invoice Deadline Extension*²²

Bald Eagle Area School District, PA, Application No. 221018292, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2024)

Berks County Intermediate Unit 14, PA, Application Nos. 231005799, 231006201, Request for Waiver, CC Docket No. 02-6 (filed Oct. 1, 2024)

Blackfoot Telephone Cooperative, Inc. (Drummond School), MT, Application No. 221036954, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Holy Name School, PA, Application No. 221034399, Request for Waiver, CC Docket No. 02-6 (filed Jul. 18, 2024)

Houston Christian High School, TX, Application No. 211007689, Request for Waiver, CC Docket No. 02-6 (filed Sept. 16, 2024)

Imagine School at Bell Canyon, AZ, Application No. 221021155, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2024)

Isanti Community Schools, NE, Application No. 221029701, Request for Waiver, CC Docket No. 02-6 (filed Sept. 26, 2024)

Isanti Community Schools, NE, Application No. 221029701, Request for Waiver, CC Docket No. 02-6 (filed Oct. 14, 2024)

Keystone Oaks School District, PA, Application No. 221019033, Request for Waiver, CC Docket No. 02-6 (filed Jul. 25, 2024)

RK Dixon (Corning Community School District), IA, Application No. 211017742, Request for Waiver, CC Docket No. 02-6 (filed Sept. 11, 2024)

²² 47 CFR § 54.514. See also *Ada School District Order*, 31 FCC Rcd at 3836, para. 8 (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances for a waiver of the Commission's rules).

Rockwood Area School District, PA, Application No. 221020937, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2024)

School District of New Richmond, WI, Application No. 221017107, Request for Waiver, CC Docket No. 02-6 (filed Oct. 3, 2024)

Sharon City School District, PA, Application No. 221020954, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2024)

Sheridan Memorial Library, TX, Application No. 211018511, Request for Waiver, CC Docket No. 02-6 (filed Jan. 2, 2024)

Southeast Polk Community School District, IA, Application No. 221022280, Request for Waiver, CC Docket No. 02-6 (filed June 11, 2024)

St. Benedict School, PA, Application No. 221034476, Request for Waiver, CC Docket No. 02-6 (filed July 23, 2024)

Tyler Communications Systems, Inc. (Academy of Dallas), TX, Application No. 211036951, Request for Waiver, CC Docket No. 02-6 (filed July 19, 2024)

West Northfield School District, IL, Application No. 211009909, Request for Waiver, CC Docket No. 02-6 (filed July 26, 2024)

*Ministerial and/or Clerical Error – Source Document*²³

NDSchoolNet, ND, Application No. 211023982, Request for Waiver, CC Docket No. 02-6 (filed Jul. 9, 2024)

*Service Substitution*²⁴

East Orange School District, NJ, Application No. 221007931, Request for Waiver, CC Docket No. 02-6 (filed Mar. 12, 2024)

*Untimely Filed Appeals or Waiver Requests*²⁵

²³ Request does not meet the requirements of the *Ann Arbor Order*, 25 FCC Rcd at 17320, n.5 (describing the type of ministerial and clerical errors that could be corrected). Here, the source document did not support NDSchoolNet's request to add additional entities to the FCC Form 471 after the application filing deadline. NDSchoolNet provided a 2014 contract as its supporting source document, but the contract did not include the four entities that were requested to be added to the FCC Form 471, and instead only provided the names of cities where services could be provided.

²⁴ See, e.g., *Requests for Waiver of Sections 54.504(c), 54.504(f), 54.507(c), and 54.507(g) of the Commission's rules by State of Louisiana Department of Education et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 1653, 1668, para. 18 (2010) (*Louisiana DOE Order*) (denying a service substitution request when it does not meet the Commission's requirements for granting a service substitution).

²⁵ 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* (continued....)

Afton Independent School District, OK, Application No. 211021701, Request for Waiver, CC Docket No. 02-6 (filed Sept. 25, 2024)

Avalon Independent School District, TX, Application No. 231021007, Request for Waiver, CC Docket No. 02-6 (filed July 24, 2024)

Avidex Industries, LLC (Garden Grove Unified School District, CA, Application No. 211022838, Request for Waiver, CC Docket No. 02-6 (filed Sept. 4, 2024)

Carahsoft Technology Corp. (Sandhill Regional Library System), NC, Application No. 221037498, Request for Waiver, CC Docket No. 02-6 (filed Sept. 6, 2024)

Clara Muhammad School of Masjid Khalifah, NY, Application Nos. 161050087, 161050090, Request for Waiver, CC Docket No. 02-6 (filed Sept. 5, 2024)

Clear Winds Technologies, Inc. (Bullock County Schools), AL, Application No. 161056523, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2022)

Hunt Telecommunications (Sophie B. Wright Charter School), LA, Application No. 221001240, Request for Waiver, CC Docket No. 02-6 (filed Jan. 9, 2024)

Keller Independent School District, TX, Application No. 221015933, Request for Waiver, CC Docket No. 02-6 (filed Feb. 20, 2024)

Laketec Communications (Chardon Local School District), Application No. 221030396, Request for Waiver, CC Docket No. 02-6 (filed May 15, 2024)

Laketec Communications (Claymont City Schools), Application No. 221003927, Request for Waiver, CC Docket No. 02-6 (filed May 15, 2024)

Legacy Traditional School, AZ, Application No. 231029559, Request for Waiver, CC Docket No. 02-6 (filed Sept. 19, 2024)

Longview Rapid Communications, Inc. (Sulphur Springs ISD), TX, Application No. 221037575, Request for Waiver, CC Docket No. 02-6 (filed Sept. 26, 2024)

Missouri Valley Community School District, IA, Application Nos. 241034446, 241035183, Request for Waiver, CC Docket No. 02 (filed Oct. 15, 2024)

New Frontiers Public Schools, TX, Application No. 231038552, Request for Waiver, CC Docket No. 02-6 (filed Sept. 27, 2024)

OpenCape (East Bridgewater School District), MA, Application No. 221025111, Request for Waiver, CC Docket No. 02-6 (filed Feb. 15, 2024)

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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).

Risetechn Partners (Kewaskum School District), WI, Application No. 221022481, Request for Waiver, CC Docket No. 02-6 (filed Dec. 28, 2023)

St. Louis City School District, MO, Application No. 161016365, Request for Waiver, CC Docket No. 02-6 (filed Sept. 6, 2022)

Sway Power Consulting Corp. (Manatee Learning Academy), FL, Application No. 221020040, Request for Waiver, CC Docket No. 02-6 (filed Feb. 21, 2024)

Valley Connections, LLC (Safford Unified School District 1), AZ, Application No. 221031258, Request for Waiver, CC Docket No. 02-6 (filed Sept. 9, 2024)

Washington Parish Library, LA, Application No. 231030660, Request for Waiver, CC Docket No. 02-6 (filed Dec. 19, 2023)

Rural Health Care Program

WC Docket No. 02-60

Granted

Late-Filed FCC Form 466 Application – Filed Within 14 Days of the Close of the Window²⁶

River Valley Primary Care Services, Inc., AR, WC Docket No. 02-60, No Funding Request Number (filed June 14, 2019)

Waiver of the Invoice Filing Deadline

Summit/Navajo County Consortium, AZ, WC Docket No. 02-60, Funding Request No. 17271651 (filed Feb. 10, 2020)²⁷

New England Telehealth Consortium – Regional Medical Center at Lubec/Healthways, ME, WC Docket No. 02-60, Funding Request No. 18417051 (filed Feb. 7, 2020)²⁸

²⁶ See *Requests for Waiver by Bartlett Regional Hospital et al.*, WC Docket No. 02-60, Order, DA 24-366, 2024 WL 1715367, at *3, para. 8 (WCB Apr. 18, 2024) (granting a waiver of the application filing deadline when the application was filed within 14 days of the deadline and administration of the RHC Program was minimally affected). River Valley Primary Care Services, Inc., filed its request for waiver of the application filing deadline within 14 days of the filing deadline. We remand this matter to USAC and direct USAC to coordinate with the petitioner on the filing of an application and then issue a funding decision based on a complete review and analysis of the application. In remanding this matter to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.

²⁷ See *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Indiana Telehealth Network, et al., Terre Haute, IN, Rural Health Care Support Mechanism*, 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). Summit/Navajo County Consortium attempted to file its invoices by the invoice filing deadline, but was prevented from doing so because the USAC filing portal would not allow submission of its invoice forms. We waive the petitioner's invoice filing deadlines and allow it 120 days from the release of this Public Notice to file invoices.

²⁸ See *In the Matter of Requests for Waiver by University of Virginia Health System Center for Telehealth and Lumos Networks, Inc., Rural Health Care Universal Service Support Mechanism*, CC Docket No. 02-60, Order, 23 FCC Rcd 1041, 1042-43, paras. 3-5 (WCB 2023) (granting waiver of invoice deadline where petitioner "submitted
(continued....)

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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its portion of the FCC Form 463 in time to permit . . . [the service provider] to complete the form prior to the invoice filing deadline,” but which the service provider failed to do). New England Telehealth Consortium (NETC) requests an extension of the invoicing deadline due to a lack of responsiveness from its service provider, Sierra Communications, Inc., which was in the process of changing its service provider identification number (SPIN) with USAC. This invoice filing delay was the result of a technical issue that was beyond the control of NETC, despite NETC’s best efforts to meet the invoice filing deadline. We waive the petitioner’s invoice filing deadlines and allow it 120 days from the release of this Public Notice to file invoices.

**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	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

ORDER DENYING STAY PETITION

Adopted: October 28, 2024

Released: October 28, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On October 21, 2024, HomeWAV, LLC (HomeWAV) filed a petition requesting that the Commission partially stay its Report and Order in the above-captioned proceedings pending resolution of its petition for reconsideration and/or clarification by the Commission filed that same day.¹ For the reasons discussed below, we deny HomeWAV’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 that 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 adopted permanent per-minute rate caps for all incarcerated people’s audio communications services, and established, for the first time, interim per-minute rate caps for incarcerated people’s video

¹ *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, 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 HomeWAV, LLC Petition for Partial Stay, WC Docket Nos. 23-62 and 12-375 (filed Oct. 21, 2024) (HomeWAV Stay Petition or Petition); HomeWAV, LLC Petition for Reconsideration and/or Clarification, WC Docket Nos. 23-62 and 12-375 (filed Oct. 21, 2024) (HomeWAV Petition for Reconsideration). The Wright Petitioners, United Church of Christ Media Justice Ministry, and Pennsylvania Prison Society (collectively, the Public Interest Parties) filed an opposition to the HomeWAV Stay Petition. See Opposition to HomeWAV Petition for Partial Stay, WC Docket Nos. 23-62, 12-375 (filed Oct. 28, 2024) (Public Interest Parties Opposition). Action on HomeWAV’s Stay Petition herein by the Wireline Competition Bureau (WCB or Bureau) on delegated authority in no way prejudices or prejudices a decision on the HomeWAV Petition for Reconsideration.

² Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2022) (Martha Wright-Reed Act or Act).

³ 47 U.S.C. § 276(b)(1)(A).

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 expressly permitted in the Martha Wright-Reed Act.⁵ In setting the new rate caps, the Commission considered cost and other data submitted by IPCS providers, including HomeWAV.⁶

3. As a relevant part of the reforms adopted in the *2024 IPCS Order*, the Commission prohibited providers from charging independent fees for ancillary services, and incorporated provider reported costs of the ancillary services previously addressed by its rules into the rate caps.⁷ The Commission found incorporating the costs of these services to be appropriate for several reasons, including because these services “are intrinsic to the provision of IPCS,” because the costs of each separate ancillary service could not be reliably isolated, and because incorporating such costs into the rate caps would better align IPCS rates with consumers’ use of IPCS and with industry trends.⁸ The Commission also ended IPCS providers’ long-standing practice of paying site commissions to carceral facilities, the costs of which were passed through to consumers via higher IPCS rates.⁹ Although many of the new requirements adopted in the *Order*, including the prohibition on ancillary service fees, 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.¹⁰

4. On October 2, 2024, October 15, 2024, and October 23, 2024, respectively, the Bureau issued orders denying Securus Technologies, LLC’s (Securus’s), Pay Tel Communications, Inc.’s (Pay Tel’s), and the National Sheriffs’ Association’s petitions for administrative stays of the *2024 IPCS Order* pending judicial review.¹¹ While these previous petitions sought broader stays, HomeWAV “seeks

⁴ See, e.g., *2024 IPCS Order* at 60, para. 119.

⁵ Martha Wright-Reed Act § 3(b)(b)(1); see also, e.g., *2024 IPCS Order* 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 *2024 IPCS Order* at 102-04, paras. 184-85. See also *id.* at 94-100, paras. 170-79.

⁷ See *id.* at 68-75, paras. 130-37.

⁸ See *id.* at 68-75, paras. 130-37.

⁹ 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).

¹⁰ *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. The HomeWAV Stay Petition seeks a stay only of the *2024 IPCS Order*’s “prohibition of ancillary fees as well as the effective date of this prohibition.” HomeWAV Stay Petition at 1.

¹¹ *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order Denying Stay Petition, DA 24-1098 (WCB rel. October 23, 2024) (*National Sheriffs’ Association Stay Denial Order*); *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order Denying Stay Petition, DA 24-1074 (WCB rel. October 15, 2024) (*Pay Tel Stay Denial Order*); *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order Denying Stay Petition, DA 24-1035 (WCB rel. October 2, 2024) (*Securus Stay Denial Order*).

issuance of a stay of the implementation of the prohibition of ancillary fees set forth in the Order” pending the resolution of its petition for reconsideration.¹²

III. DISCUSSION

5. Section 1.429(k) of the Commission’s rules permits the Commission “upon good cause shown” to “stay the effective date of a rule pending a decision on a petition for reconsideration.”¹³ To qualify for the extraordinary remedy of a stay, a petitioner must demonstrate that the following four criteria will be satisfied: (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 favor grant of the stay.¹⁴ 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.¹⁵ The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.¹⁶ HomeWAV’s petition has failed to meet that burden.

6. As an initial matter, HomeWAV’s petition largely ignores the criteria necessary to support a stay and, as a result, has failed to adequately plead its stay request. As section 1.429(k) of the rules makes clear, by default “the filing of a petition for reconsideration shall not excuse any person from complying with any rule or operate in any manner to stay or postpone its enforcement.”¹⁷ The mere fact of a request for reconsideration, in itself, thus cannot be enough to justify a stay. While HomeWAV reiterates several arguments made in its separate petition for reconsideration, implicitly suggesting that these rationales satisfy the Commission’s stay criteria,¹⁸ nowhere does HomeWAV argue or explain how these arguments demonstrate that it is likely to prevail on the merits, that it will suffer irreparable harm absent a stay, that other interested parties will not be harmed by a stay, or that the public interest would favor grant of a stay under the governing legal standard.¹⁹ HomeWAV’s Petition offers no supporting case law.²⁰ Because HomeWAV has failed to properly allege and substantiate its stay request, we conclude that HomeWAV has failed to meet its burden to demonstrate that a stay is warranted. Nonetheless, as an independent, additional basis for our decision, we address each of the arguments HomeWAV advances below.

¹² HomeWAV Stay Petition at 2.

¹³ 47 C.F.R. § 1.429(k).

¹⁴ 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)). These same criteria apply when evaluating a stay under section 1.429(k). See, e.g., *Amendment Of Part 90 Of The Commission's Rules*, Order, 36 FCC Rcd 9761, 9762, para. 5 (2021) (*4.9 GHz Stay Order*).

¹⁵ *Nken*, 556 U.S. at 427 (internal citations omitted); *Securus Stay Denial Order* at 3, para. 5.

¹⁶ *National Sheriff's Association Stay Denial Order* at 3, para. 5; *Pay Tel Stay Denial Order* at 3, para. 5; *Securus Stay Denial Order* at 3, para. 5; *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8 (citing *Nken*, 556 U.S. at 433-34).

¹⁷ 47 CFR § 1.429(k).

¹⁸ See generally HomeWAV Stay Petition at 2-3; HomeWAV Petition for Reconsideration.

¹⁹ In fact, the concept of “irreparable harm” only appears once in the Petition, in its request for relief that is generally inarticulate: “to prevent harm *which is not reparable or otherwise providers*, consumers, and the public . . .” HomeWAV Stay Petition at 3 (emphasis added). See Public Interest Parties Opposition at 2 (“[The HomeWAV Stay Petition] does not identify, let alone explain, how it meets the legal standard to merit a stay, fails to allege HomeWAV would likely prevail on the merits or suffer irreparable harm, and offers no evidence that the Partial Stay is in the public interest.”).

²⁰ See generally HomeWAV Stay Petition.

7. *Illicit Conduct.* In support of its stay request, HomeWAV first argues that implementation of the Commission’s prohibition on ancillary services charges in the *2024 IPCS Order* “will make it more difficult to safeguard against illicit conduct such as money laundering and fraud.”²¹ It argues that implementation of the Commission’s new rules will permit “rampant fraud and money laundering by consumers” and will “lead to larger providers shifting the processing of financial transactions to affiliates.”²² Without prejudging the issue, we find that HomeWAV has not introduced sufficient support to demonstrate that eliminating ancillary fee charges will increase fraud and money laundering by consumers.²³ For example, HomeWAV has not demonstrated that the degree of consumer money laundering, if any, depends on the presence or absence of such charges. Likewise, HomeWAV has not explained or substantiated how the risk of any of these claims, such as any risks to public safety, is imminent or immediate.²⁴ As such, we find HomeWAV’s argument in this regard wholly inadequate to support a stay. Additionally, we note that the Commission broadly addressed concerns about the relationship between the affordability of IPCS and unlawful activities in the *2024 IPCS Order*.²⁵

8. *Implementation Date Impact.* In its second and third points, HomeWAV further contends that the prohibition on ancillary services fees taking effect prior to the prohibition on site commissions “would create an illogical and inequitable situation where IPCS providers are continuing to incur expenses (i.e., site commission payments) which are assumed not to exist in the Commission’s justification for eliminating ancillary fees.”²⁶ HomeWAV contends that this hypothetical “discrepancy between revenues and costs” will either prevent providers from “fulfill[ing] obligations under existing contracts” or force them “to provide service while incurring costs that exceed permitted revenues.”²⁷ We considered and rejected similar arguments raised in the stay petition submitted by Pay Tel, and HomeWAV fails to provide any additional support for such claims, or to identify any flaws in our reasoning in its Petition so as to justify a stay.²⁸

9. As we explained in the *Pay Tel Stay Denial Order*, “[t]he elimination of separate ancillary service charges was based on ‘four independently sufficient findings,’ which generally were independent from the specific IPCS rate caps”—and, consequently, the underlying prohibition on site

²¹ *Id.* at 1.

²² *Id.* at 2.

²³ *Id.* at 2. *See also* Public Interest Parties Opposition at 8 (observing that HomeWAV does not explain “why HomeWAV would have to dedicate more resources to defending against fraud once ancillary service charges are eliminated”).

²⁴ *See, e.g., 4.9 GHz Stay Order*, 36 FCC Rcd at 9763-64, paras. 8-9 (finding a risk of “short-term public safety access to [the] spectrum” at issue there absent a stay and concluding that harms would be “immediate”). As we note below, providers are able to continue to charge above-cost rates in the near term. *See supra* n.32; *cf. Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order Granting Stay Petition in Part, 32 FCC Rcd 1793, 1798, para. 15 (2017) (finding that “providers already are incurring costs” associated with the relevant rules).

²⁵ *2024 IPCS Order* at 20, para. 29 & n.120 (observing that formerly incarcerated persons “suggest[ed] that unlawful activities within correctional facilities would likely decrease if communications services were affordable and accessible”). HomeWAV has not attempted to rebut these findings beyond the conclusory statements in its pleading.

²⁶ HomeWAV Stay Petition at 2-3.

²⁷ *Id.* at 3. We note that, although HomeWAV does not detail how its site commission payments are calculated under its existing contracts, to the extent such commissions are often calculated based on revenues earned, site commission payments would not be required for ancillary services for which no separate revenue is earned. In other words, HomeWAV would actually pay less in site commissions based on the elimination of revenues from separate ancillary service charges, thereby reducing or eliminating this hypothetical discrepancy.

²⁸ *See Pay Tel Stay Denial Order* at 13-14, 16-18, paras. 29-32, 36-37.

commissions—“established in the *2024 IPCS Order*.”²⁹ Like Pay Tel, the HomeWAV Stay Petition “does not make clear why eliminating site commissions should be a necessary predicate for eliminating ancillary service charges,” and “does not address the fact that it will continue to benefit from the higher prior rate caps as it manages its transition to the new rate caps and implements the Commission’s site commission reforms.”³⁰ In short, HomeWAV fails to substantiate how eliminating ancillary service charges “notwithstanding the continuation” of site commission expenses in the short run would result in a “significant adverse impact on providers.”³¹ Consequently, we find HomeWAV’s claims of financial losses arising from the separate implementation dates, and its claim that the *2024 IPCS Order* did not “fully consider the implications” of these implementation dates, to be unpersuasive as a theory for granting a stay.³²

10. *Consumer Cost.* As a fourth point in support of its Petition, HomeWAV argues that “the prohibition on ancillary fees . . . will cause consumers who are not ‘cost causers’ to incur costs caused by others.”³³ Again, while we avoid prejudging the argument on this point, we find that HomeWAV has not introduced sufficient support to demonstrate that it is likely to succeed on the merits.³⁴ For example, HomeWAV also contends, without support, that the “elimination of the ancillary fees will incent consumer behavior which will drive up the costs of providing service.”³⁵ Yet it points to no record evidence of such consumer behavior, and we can find none.³⁶ Neither has HomeWAV alleged that such consequences will be imminent. We therefore conclude that HomeWAV has not adequately met its burden to merit staying the *2024 IPCS Order*.

²⁹ *Id.* at 14, para. 31 (quoting *2024 IPCS Order* at 223-24, para. 415); *see also Securus Stay Denial Order* at 13-14, paras. 28-29; Public Interest Parties Opposition at 4-5, 6-7. Because the analysis supporting the elimination of separate ancillary service charges was not tied to or otherwise related to the site commission prohibition, we disagree with HomeWAV’s assertion that the separate implementation timelines are “inconsistent with the methodology the Order seeks to implement for recovering costs associated with ancillary services – which assumes the elimination of site commissions.” HomeWAV Stay Petition at 2.

³⁰ *Pay Tel Stay Denial Order* at 14, para. 31; *see also id.* at 16-18, paras. 36-37 and Appx. A (analyzing Pay Tel’s relative projected costs and revenues during the period between the effective dates for the prohibitions on ancillary service fees and site commissions). In contrast to Pay Tel, HomeWAV fails to present even an approximate estimate of its alleged losses stemming from the different timelines for implementing the prohibitions on ancillary service fees and site commissions.

³¹ HomeWAV Stay Petition at 3.

³² *Id.* at 3. HomeWAV likewise argues that the prohibition on ancillary fees “will result in a mismatch between costs and revenues causing providers to provide below[-]cost service under existing contracts” *Id.* at 3. The allegation of below-cost service is unsupported, and we again reject the notion of this timing mismatch on the same grounds as we have previously: in the short term, companies may charge above-cost rates, and in the long term, the costs of ancillary service charges are included in the rate caps. *Securus Stay Denial Order* at 15, para. 32; *Pay Tel Stay Denial Order* at 17, para. 36 n.142. *See also* Public Interest Parties Opposition at 7 (arguing that “the delayed implementation period for smaller facilities will impose greater harms is illogical” precisely because “providers will be receiving more money during the interim period”) (emphasis in original).

³³ HomeWAV Stay Petition at 3.

³⁴ This argument also appears in HomeWAV’s Petition for Reconsideration. *See* HomeWAV Petition for Reconsideration at 4.

³⁵ HomeWAV Stay Petition at 3.

³⁶ Tied to this claim, HomeWAV argues without substantiation that “if implemented, the new rule will create a situation where IPCS providers are not able to recover their costs. . . .” HomeWAV Stay Petition at 3. We have rejected such claims previously, and reiterate those findings here. *See, e.g., Securus Stay Denial Order* at 15, para. 32; *Pay Tel Stay Denial Order*, at 17, para. 36.

11. *Public Interest.* Finally, HomeWAV makes no showing in its Petition as to how the public interest would be favored upon grant of its Stay Petition. Indeed, we find that grant of the Petition would harm the public interest for many of the same reasons articulated in our prior stay petition denials.³⁷ Granting a stay would be contrary to the public interest because it would delay the benefits of our ancillary service charge reform and otherwise inhibit the Commission’s ability to protect consumers in that regard. A stay would effectively force consumers to continue to pay prices above the just and reasonable rates -- rates that incorporated ancillary service costs -- determined in the *2024 IPCS Order* over a prolonged period.³⁸ For example, and as the Commission observed in the *2024 IPCS Order*, consumers stand to gain from the elimination of ancillary service charges, which are a source of consumer confusion and detrimental provider practices.³⁹ The public interest in seeing the Commission’s ancillary service 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 these excessive and undue financial burdens,⁴⁰ 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.⁴¹

³⁷ See *Pay Tel Stay Denial Order*, at 18-21, paras. 39-43; *Securus Stay Denial Order* at 18-29, para. 38-42; *NSA Stay Denial Order*, at 15-17, paras. 36-39. The circumstances here thus stand in stark contrast to prior decisions granting stay pending reconsideration where no harm was found to result from the stay. See, e.g., *4.9 GHz Stay Order*, 36 FCC Rcd at 9764, para. 9 (“there is no information in the record indicating that any party will be harmed by the grant of this interim stay”); *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order Granting Stay Petition in Part, 32 FCC Rcd 1793, 1798, para. 15 (2017) (“[t]he record contains no evidence of harm to consumers as a result” of the legal regime that existed prior to the rules subject to the stay request).

³⁸ See, e.g., Public Interest Parties Opposition at 10 (observing that a 2013 report found that ancillary service charges “added up to almost 40% of what incarcerated people and their families were spending on phone calls”). As we note above, to the extent HomeWAV continues to charge rates above our new rate caps in the near term, it will earn revenue above costs, as the costs for ancillary services charges are included in our new lower just and reasonable rate caps. See *infra* n.32.

³⁹ See *2024 IPCS Order* at 224-26, 227-29, paras. 418-19, 421-26; see also Public Interest Parties Opposition at 9 (“The Commission eliminated ancillary service charges because they were a form of double dipping, incentivized abuse, and covered services that were part of the calls that were already being paid for through per-minute rates.”); *id.* at 10-11.

⁴⁰ See *2024 IPCS Order* 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 argued in response to Pay Tel’s stay petition, a stay will “deprive many incarcerated people of the regular contact with their families and communities that is essential to their health and wellbeing, as well as their access to legal representation.” Opposition to Pay Tel Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375, at 10-11 (filed Oct. 14, 2024) (Public Interest Parties Oct. 14, 2024 Opposition); Public Interest Parties Opposition at 9-10, 11 (same); see also Opposition to the National Sheriffs’ Association’s Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 22, 2024) (Public Interest Parties Oct. 22, 2024 Opposition); Opposition to Securus Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375, at 9-10 (filed Oct. 1, 2024) (“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]. Such delay would prevent many incarcerated people from the health, safety, and wellbeing benefits that reliable communications with their loved ones could bring.”); Opposition of Stephen A. Raher to Securus Technologies’ Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (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”).

⁴¹ See Public Interest Parties Oct. 14, 2024 Opposition at 11 (“Staying the [2024 IPCS Order] would also frustrate Congress’s express directive that regulations implementing the [Martha Wright-Reed] Act be timely promulgated (continued....)”).

12. For the foregoing reasons, we conclude that HomeWAV has not met its burden in support of a stay.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, 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.

14. IT IS FURTHER ORDERED, that HomeWAV's Petition for Partial Stay, filed October 21, 2024, in WC Docket Nos. 23-62 and 12-375, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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and effectuated to afford incarcerated people and their families much-needed relief.”); Public Interest Parties Opposition at 10, 11 (same); Public Interest Parties Oct. 22, 2024 Opposition at 8 (same).

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

In the Matter of	)	
	)	
Promoting Telehealth for Low-Income Consumers	)	WC Docket No. 18-213
	)	

ORDER

Adopted: October 28, 2024

Released: October 28, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we establish a uniform completion deadline of December 31, 2025, for all projects funded by the Connected Care Pilot Program (Pilot Program) and waive, on our own motion, the previous completion deadline of three years from each project’s start date. We take this action to ensure that Pilot Program participants can fully implement their approved projects, thus maximizing the Commission’s ability to assess the Pilot Program’s efficiency, efficacy, and impact. All factors considered, this action will improve administrability of the Pilot Program and generate a more fulsome body of data for the Commission’s upcoming program assessment.

II. BACKGROUND

2. The Connected Care Pilot Program made up to \$100 million available for selected pilot projects to defray the cost of providing connected care services for eligible entities.¹ The Commission identified “connected care” services as a subset of telehealth that uses broadband Internet access service-enabled technologies to deliver remote medical, diagnostic, patient-centered, and treatment-related services directly to patients outside of traditional brick and mortar medical facilities, including specifically to patients at their mobile location or residence.² Non-profit or public health care providers that fall within the enumerated categories in section 254(h)(7)(B) of the Communications Act were eligible for Pilot Program support.³ The Pilot Program was conceived prior to the COVID-19 pandemic and was established to support the delivery of connected care to patients, with a focus on low-income and veteran patients, as well as to generate data about whether and how Universal Service Fund support could be used to enable adoption of connected care services.⁴ The Pilot Program application window opened

¹ *Promoting Telehealth for Low-Income Consumers COVID-19 Telehealth Program*, WC Docket Nos. 18-213 and 20-89, Report and Order, 35 FCC Rcd 3366, 3387, 3397, paras. 41, 55 (2020) (*First Connected Care Report and Order*).

² *First Connected Care Report and Order*, 35 FCC Rcd at 3375, 3385, paras. 14, 39.

³ See 47 U.S.C. § 254(h)(7)(B). Projects were selected from eligible non-profit or public health care provider applicants and funded to cover 85% of eligible costs for broadband connectivity, network equipment, and information services. Projects were selected with the intention primarily to benefit low-income or veteran patients. *First Connected Care Report and Order*, 35 FCC Rcd at 3384, para. 38; *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Second Report and Order, 36 FCC Rcd 10642, 10643-5, paras. 4-5, 8 (2021) (*Second Connected Care Report and Order*).

⁴ See *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Inquiry, 33 FCC Rcd 7825 (2018) (*Connected Care Notice of Inquiry*); *Promoting Telehealth for Low-Income Consumers*, WC Docket (continued....)

November 6, 2020, and closed December 7, 2020.⁵ The Commission announced selections from January 2021 to March 2022.⁶

3. In the *Second Connected Care Report and Order*, the Commission required that each Pilot Program project was to end three years from each project's start date, which is defined as the first date that supported services are provided, and no later than June 30, 2025.⁷ The Commission delegated to the Wireline Competition Bureau (Bureau) the authority to waive Pilot Program deadlines and to grant limited deadline extensions for some or all selectees consistent with the goals of the program.⁸ On May 20, 2022, the Bureau announced that with some projects scheduled to start in the fall of that year, the completion deadline would be adjusted such that all projects were to end after three years and no later than December 31, 2025.⁹ These deadlines were established to ensure finality for the Pilot Program and were based on belief that three years would provide sufficient time for participants to fully implement and execute their projects. Three Pilot Program selectees have since requested extensions of their project end dates beyond the three-year completion deadline.¹⁰

III. DISCUSSION

4. We waive the Pilot Program's existing three-year completion deadline and extend a uniform deadline applicable to all pilot projects to December 31, 2025. The Commission's rules "may be waived by the Commission on its own motion or on petition" for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent

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No. 18-213, Notice of Proposed Rulemaking, 34 FCC Rcd 5620 (2019) (*Connected Care Notice*); *First Connected Care Report and Order*, 35 FCC Rcd at 3367-69, 3375, 3384 paras. 2-6, 13, 37.

⁵ *Wireline Competition Bureau Announces Connected Care Pilot Program Application Filing Window Opening*, WC Docket No. 18-213, Public Notice, 35 FCC Rcd 12751 (2020) (*Application Filing Window Notice*).

⁶ *Federal Communications Commission Announces Initial Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 593 (2021) (*Initial Project Selection Notice*); *Federal Communications Commission Announces Second Set of Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 10533 (2021); *Federal Communications Commission Announces Third Set of Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 15952 (2021); and *Federal Communications Commission Announces Final Set of Projects Selected for the Connected Care Pilot Program*, WC Docket 18-213, Public Notice, 37 FCC Rcd 4358 (2022) (*Final Project Selection Notice*).

⁷ *Second Connected Care Report and Order*, 36 FCC Rcd at 10655, para. 28 and n.74 ("The beginning of the Pilot project is the first day that supported services are provided.").

⁸ See *First Connected Care Report and Order*, 35 FCC Rcd at 3390, para. 46 (delegating authority to the Bureau to "consistent with the goals of the Pilot Program, grant limited extensions of deadlines for some or, if necessary, all of the projects in order to ensure the successful operation of the Pilot Program."); *Second Connected Care Report and Order*, 36 FCC Rcd at 10662, para. 48 (delegating authority to the Bureau to "waive certain program deadlines, clarify any inconsistencies or ambiguities in the Pilot Program rules, adjust Pilot project funding commitments, or to perform other administrative tasks as may be necessary for the smooth operation of the Pilot Program").

⁹ *Wireline Competition Bureau Announces Key Deadlines for Connected Care Pilot Program*, WC Docket 18-213, Public Notice, 37 FCC Rcd 6386 (2022) (*Key Deadlines Notice*).

¹⁰ See Request for Waiver of Temple University Hospital, WC Docket No 18-213 (filed May 9, 2024) (requesting that the end date of Temple University's Pilot Program project be moved from August 31, 2024, to December 31, 2025) (Temple Waiver Request); Request for Waiver of CommonSpirit Health, WC Docket No 18-213 (filed May 21, 2024) (requesting that the end date of CommonSpirit's Pilot Program project be extended to an unspecified date) (CommonSpirit Waiver Request); and Petition for Waiver of University of Virginia Health System, WC Docket 18-213 (filed June 28, 2024) (requesting that the end date of its Pilot Program project be extended from June 30, 2024, to September 30, 2024, with no increase in funding) (UVA Waiver Request).

¹¹ 47 CFR § 1.3.

with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹⁴

5. Special circumstances resulting from the unprecedented impact of the COVID-19 pandemic warrant deviation from the initial deadline to complete Connected Care Pilot Program projects. Though the COVID-19 emergency period has formally ended,¹⁵ implementation of the Connected Care Pilot Program has been affected in multiple ways by the exigencies of the pandemic, from the timing of the initial application window to the adjustment of certain deadlines.¹⁶ Further, the effects of the pandemic impacted many health care providers' participation in the Pilot Program. All of the Pilot projects were started during the pandemic emergency period. Although the pandemic has ended, Pilot participants have reported that the effects of the pandemic continue to impact their participation in the Pilot Program. For example, CommonSpirit cites difficulties in securing match funds while the organization was coping with "deep budget cuts being made to recover from the pandemic," and Temple University Hospital says its pace of recovery from the pandemic slowed down its ability to execute certain administrative tasks related to its Pilot project launch in a timely manner.¹⁷ The University of Virginia says its pace of rollout to rural and low-income Virginians was slower than anticipated but that additional time will provide extended services to thousands of recipients and generate more program data.¹⁸ Extending the deadline to complete projects will help to mitigate the impacts of the COVID-19 pandemic on participants' implementation and execution of their projects. In addition, we recognize that as a result of the effects of the pandemic on participants' operations, timely completion of reports and adherence to Pilot Program deadlines continues to pose challenges for many awardees.

¹² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ The White House, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15337 (Mar. 13, 2020). See National Archives and Records Administration, Federal Register, <https://www.federalregister.gov/d/2020-05794>; The White House, Briefing Room, <https://www.whitehouse.gov/briefing-room/legislation/2023/04/10/bill-signed-h-j-res-7/> (Apr. 10, 2023). A related public health emergency lasted slightly longer and was terminated by the Secretary of Health and Human Services on May 11, 2023. See Department of Health and Human Services, COVID-19 Public Health Emergency, <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited Oct. 28, 2024).

¹⁶ The Report and Order creating the Pilot Program was adopted and released in April 2020, and the application window was open from November to December 2020. See *Application Filing Window Notice*. The initial Request for Funding filing deadline for selectees was extended in March 2022. See *Final Project Selection Notice*, 37 FCC Rcd at 4360, para. 9. The deadline for selectees to file initial funding requests was waived and extended in response to pandemic-related issues raised by participants, such as "supply-chain delays and discontinuities, staff absences due to COVID, and challenges with state government purchasing regulations." See *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Order, 37 FCC Rcd 326, 327 para. 3 (WCB 2022). As previously noted, all projects were given three years for completion or until June 30, 2025 at the latest, but the deadline was later extended to December 31, 2025, at the latest. See *Key Deadlines Notice*, 37 FCC Rcd at 6386.

¹⁷ See CommonSpirit Waiver Request (noting that among the organization's "significant challenges which delayed progress" was locating matching funds "during a critical time in our organization during deep cuts being made to recover from the pandemic"). See also E-mail from Kanchana Perera, Manager, IT Finance/Business Operations, Temple Health IT to Clinton Highfill, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau (Aug. 23, 2024, 6:41 p.m.) ("Additionally, I'd like to emphasize that delays in filing funding requests were largely due to the COVID-19 pandemic.") (Temple Email).

¹⁸ See UVA Waiver Request at 4, 6 (stating that while support has been drawn down more slowly than anticipated, a time extension would enable UVA Health "to continue providing connected care services to thousands of patients").

6. Extending the deadline to complete Pilot Program projects will also advance the public interest. The Commission adopted three specific goals for the Pilot Program — to determine how USF support can enable health care providers to: (1) improve health outcomes through connected care; (2) reduce health care costs for patients, facilities, and the health care system; and (3) support the trend towards connected care everywhere.¹⁹ The Commission specifically sought to provide benefits to low-income and veteran patients with health challenges and to defray the costs of providing connected care services.²⁰ The Pilot Program was also structured to “incentivize participation from a wide range of eligible health care providers, their patients, and a variety of broadband service providers.”²¹ From the experience gathered through the various approved projects, the Commission seeks to collect meaningful data about the USF’s potential to support connected care.²² Extending the deadline to complete all Pilot projects to December 31, 2025, furthers these public interest goals. For instance, Temple University and University of Virginia Health state that they will be able to extend their services and, in some cases, serve additional patients if they receive an extension of time for project completion.²³ Extending the deadline to complete pilot projects also furthers the public interest because allowing full implementation of the approved projects will lead to more meaningful and comprehensive data from the program participants and allow for a more fulsome assessment of the Pilot Program’s efficiency, efficacy, and impact. We conclude that the public interest in meaningful Pilot Program data is best served by ensuring the successful completion of a wide variety of selectee projects. Further, since other Pilot projects are scheduled to end as late as December 31, 2025, extending the deadline for all projects will not impact the Commission’s efficient administration of the program or its efforts to assess the Pilot Program’s outcome in a timely fashion, and we expect the change overall to have a net positive effect on program administration.

7. Pursuant to our authority to extend limited extensions of Pilot Program deadlines, we establish a new deadline of December 31, 2025, by which each approved project must be completed.²⁴ Our waiver of the previous deadline and adoption of a new extended deadline to complete Pilot Program projects does not create risk of waste, fraud, or abuse because funding levels, compliance requirements, and scope of individual projects remain unchanged. This waiver merely permits projects to continue using their pre-approved program budgets through the end of 2025 at the latest.²⁵ Selected projects remain subject to all other Pilot Program rules including competitive bidding rules, funding request and commitment procedures, data reporting requirements, and document retention requirements.²⁶

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the prior

¹⁹ *First Connected Care Report and Order*, 35 FCC Rcd at 3415, para. 83.

²⁰ *Id.* at 3368, para 5.

²¹ *Id.* at 3384, para. 37.

²² *Id.*

²³ See Temple Waiver Request; CommonSpirit Waiver Request; and UVA Waiver Request. Funding commitment amounts will not be increased for selectees that extend their services. See *infra* para. 7.

²⁴ See *First Connected Care Report and Order*, 35 FCC Rcd at 3390, para 46.

²⁵ The Bureau’s delegated authority is limited to administrative changes “necessary to ensure a successful Pilot Program.” See *Second Connected Care Report and Order*, 36 FCC Rcd at 10662, para. 48.

²⁶ See *Second Connected Care Report and Order*, 36 FCC Rcd at 10648-59, paras. 19-38.

deadline for all Connected Care Pilot program participants to complete their approved projects IS WAIVED and the deadline is extended for all until December 31, 2025.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



DA 24-1111

Released: October 28, 2024

**WIRELESS TELECOMMUNICATIONS BUREAU HIGHLIGHTS RECENT
UPDATES TO FCC SHIP SAFETY CERTIFICATES
(FCC FORMS 806, 824, 827, and 829)**

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) notifies all FCC-licensed vessel inspectors (inspectors) and U.S. compulsory vessels that the Office of Management and Budget (OMB) has approved the FCC Ship Safety Certificates (FCC Forms 806, 824, 827, or 829). The FCC Forms have been updated and are now publicly available for use, effective immediately.¹ However, recognizing that the maritime community will need time to transition to the new FCC Forms, the Bureau will also accept the voluntary use of the previous version of the FCC Forms until November 27, 2024.² Further, all FCC Forms 824, 827, and 829 issued on or before November 27, 2024, will remain in force until the date specified on the FCC Ship Safety Certificate; because FCC Form 806 does not explicitly provide a blank space for the inspector to write in such a date, all FCC Forms 806 will remain in force for one year from the date of the inspection.

BACKGROUND. When inspecting a vessel's radio equipment, FCC-licensed inspectors complete the appropriate FCC Ship Safety Certificate to certify that a vessel complies with any of the following, if applicable: the Communications Act of 1934, as amended (The Communications Act),³ the Commission's rules,⁴ the Vessel Bridge-to-Bridge Radiotelephone Act,⁵ or the International Convention for the Safety of Life at Sea (SOLAS), 1974.⁶

Previously, the Bureau issued a Public Notice on July 15, 2024, notifying FCC-licensed inspectors and U.S. compulsory vessels traveling internationally of recent amendments to SOLAS, which included updates to certain SOLAS ship safety certificates that impacted FCC Forms 806 and 829.⁷ That Public Notice announced, in pertinent part, that the Bureau was in the process of obtaining OMB approval

¹ Copies of the updated FCC Ship Safety Certificates are available on the Commission's website. FCC, *Current FCC Forms*, <http://www.fcc.gov/formpage.html> (last visited Oct. 10, 2024). The updates reflect that the OMB control number (3060-0228) associated with the FCC Forms expires in August 2027.

² The OMB control number for the previous FCC Forms was valid until August 31, 2024.

³ FCC, *The Communications Act of 1934*, <https://transition.fcc.gov/Reports/1934new.pdf> (last visited Oct. 10, 2024).

⁴ National Archives and Records Administration, *Electronic Code of Federal Regulations*, <https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-80?toc=1> (last visited Oct. 10, 2024).

⁵ Vessel Bridge-to-Bridge Radiotelephone Act, Pub. L. No. 92-63, 85 Stat 164 (1971), <https://www.congress.gov/92/statute/STATUTE-85/STATUTE-85-Pg164.pdf>.

⁶ In addition to the aforementioned FCC Forms, FCC-licensed inspectors are required to enter the results of the inspection in the ship's log. 47 CFR § 80.59(a)(2). Further, the vessel's owner, operator, or ship's master must certify in the ship's log that the inspection was satisfactory. *Id.*

⁷ *Wireless Telecommunications Bureau Highlights Recent Amendments to the International Convention for the Safety of Life at Sea, 1974, Affecting Compulsory Vessels and Vessel Inspectors*, Public Notice, DA 24-682 (WTB 2024).

of the revisions to the FCC Forms through the Paperwork Reduction Act (PRA).⁸ The Bureau stated that it would issue a separate Public Notice when the revised FCC Forms became available. Since then, the Bureau has obtained OMB approval for the forms referenced in that Public Notice, FCC Forms 806 and 829, as well as for FCC Forms 824 and 827.⁹ The OMB control number (3060-0228) associated with FCC Forms 806, 824, 827, and 829 is valid for the next three years until August 2027.¹⁰

FCC FORMS 806 and 829. The Bureau has revised FCC Form 806, which is entitled “Certificate of Compliance with the Provisions of the Radio Provisions of the International Convention of the Safety of Life at Sea, 1974 (as Amended) and/or Subpart W,”¹¹ and FCC Form 829, which is entitled “Cargo Ship Safety Radio Certificate.”¹² These revisions are based on the International Maritime Organization’s (IMO’s)¹³ recent updates to performance standards and amendments to SOLAS pertaining to ship safety certificates.¹⁴ These changes were adopted by the IMO in April 2022 by way of Maritime Safety Committee (MSC) Resolution 496(105),¹⁵ which updated various SOLAS ship safety certificates and therefore required updates to FCC Form 806 and FCC Form 829. These FCC Forms are intended to mirror the applicable SOLAS ship safety certificates.¹⁶ Both FCC Forms are used by FCC-licensed inspectors when inspecting a vessel’s radio equipment and certifying that a vessel complies with the SOLAS radiocommunication requirements; FCC Form 806 is also used to certify that a vessel complies with Subpart W of the Commission’s Rules in Part 80.¹⁷

FCC FORMS 824 and 827. Regarding the remaining FCC Ship Safety Certificates, the Bureau updated FCC Form 824, which is entitled, “Communications Act Safety Radiotelephony Certificate,”¹⁸

⁸ *Id.*

⁹ OMB, *Information Collection Request (ICR) Package*, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202407-3060-001 (last visited Oct. 10, 2024).

¹⁰ As noted on each of the aforementioned FCC Forms, the public is not required to complete an FCC Ship Safety Certificate that does not display a valid OMB control number.

¹¹ FCC, *Certificate of Compliance with the Radio Provisions of the International Convention for the Safety of Life at Sea, 1974 (as Amended) and/or Subpart W*, <https://www.fcc.gov/sites/default/files/806.pdf> (last visited Oct. 10, 2024).

¹² FCC, *Cargo Ship Safety Radio Certificate*, <https://www.fcc.gov/sites/default/files/829.pdf> (last visited Oct. 10, 2024).

¹³ The IMO is a United Nations specialized agency responsible for the safety and security of shipping, among others. IMO, *International Maritime Organization*, <https://www.imo.org/> (last visited Oct. 10, 2024).

¹⁴ MSC Resolution 496(105) modernized the SOLAS provisions regarding radiocommunications and updated various SOLAS ship safety certificates. IMO, *Amendments to the International Convention for the Safety of Life At Sea, 1974 (MSC Resolution 496(105))*, [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MSCResolutions/MSR.496\(105\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MSCResolutions/MSR.496(105).pdf) (last visited Oct. 10, 2024).

¹⁵ *Id.*

¹⁶ See Consolidated Text of the Annex to the 1974 SOLAS Convention and the 1988 Protocol Relating Thereto, Part B (Surveys and Certificates), Regulation 15 (Forms of certificates and records of equipment), which provides, in pertinent part, that certificates “shall be drawn up in the form corresponding to the models given in the appendix to the annex to the present Convention.” Int’l Maritime Org. [IMO] SOLAS Consolidated Edition 2020 32 (CPI Group (UK) Ltd, ed., 7th ed. 2020).

¹⁷ Subpart W contains the rules applicable to the Global Maritime Distress and Safety System. Every U.S. ship subject to SOLAS or part II of title III of the Communications Act must comply with Subpart W. See 47 CFR §§ 80.1065-80.1135.

¹⁸ FCC, *Communications Act Safety Radiotelephony Certificate*, <https://www.fcc.gov/sites/default/files/824.pdf> (last visited Oct. 10, 2024).

and FCC Form 827, which is entitled, “Vessel Bridge-to-Bridge Radiotelephony Certificate.”¹⁹ The updates to these forms consisted of non-substantive edits. Both FCC Forms are used by FCC-licensed inspectors when certifying that a vessel’s radio communication equipment complies with the Commission’s rules. FCC Form 824 also certifies that the radiocommunications equipment complies with the Communications Act; and FCC Form 827 certifies that the radiocommunications equipment complies with the Vessel Bridge-to-Bridge Radiotelephone Act.

OMB APPROVAL. As noted above, the Commission allows FCC-licensed inspectors to conduct radio inspections of vessels, certify whether a vessel passes inspection, and issue the appropriate FCC Ship Safety Certificate. As per the PRA process, the Commission initiated a 60-day public comment period, which published in the Federal Register on April 25, 2024.²⁰ The Commission subsequently initiated a 30-day public comment period, which published in the Federal Register on July 1, 2024, directing comments to OMB as the Bureau had submitted its updated FCC Forms for PRA consideration.²¹ On August 27, 2024, OMB approved of FCC Forms 806, 824, 827, and 829 with an OMB number that now expires in August 2027.²² On September 20, 2024, the Commission published a notice in the Federal Register, notifying the public of OMB’s approval.²³

RADIO INSPECTIONS. Under the PRA, the Commission now requires that radio inspections be certified using the updated FCC Ship Safety Certificates, which reflect an OMB number that expires in August 2027. The updated FCC Forms are now available on the Commission’s webpage for immediate use.

However, as discussed above, the previous version of the FCC Ship Safety Certificates issued voluntarily by an inspector on or before November 27, 2024, will be accepted by the Bureau during this transition. Completed previous versions of the FCC Forms will be valid and will remain in force until the date specified by the inspector on FCC Forms 824, 827, or 829. Because FCC Form 806 does not explicitly provide a blank space for the inspector to write in such a date, any existing FCC Form 806 that was certified on or before November 27, 2024, remains valid for one year from the date of that inspection. This one-year timeframe is consistent with the annual inspection that is required by SOLAS and Subpart W of the Commission’s rules. Thus, after the one-year period, the FCC-licensed inspector is required to use updated FCC Form 806 for the next annual inspection of that vessel.

PROCEDURAL MATTERS. If any issues arise during an inspection at a foreign port regarding the updated FCC Forms, vessels should contact Ghassan Khalek by e-mail: Ghassan.Khalek@fcc.gov or phone: 202-316-5638; or Katie Knox by e-mail: Katie.Knox@fcc.gov or phone: 717-338-2652, for assistance.

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

Additional Information. For further information regarding this Public Notice, please contact

¹⁹ FCC, *Vessel Bridge-to-Bridge Radiotelephony Certificate*, <https://www.fcc.gov/sites/default/files/827.pdf> (last visited Oct. 10, 2024).

²⁰ FCC, *Information Collection Being Reviewed by the Federal Communications Commission*, 89 Fed. Reg. 31749 (Apr. 25, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08775.pdf>.

²¹ FCC, *Information Collection Being Submitted for Review and Approval to [the] Office of Management and Budget*, 89 Fed. Reg. 54459 (July 1, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-07-01/pdf/2024-14479.pdf#page=1>.

²² OMB, *ICR Package*, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202407-3060-001 (last visited Oct. 10, 2024).

²³ FCC, *Information Collection Approved by the Office of Management and Budget*, 89 Fed. Reg. 77151 (Sept. 20, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-09-20/pdf/2024-21472.pdf>.

Kathleen Curameng by e-mail: Kathleen.Curameng@fcc.gov or phone: 571-435-9424.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

- FCC -



PUBLIC NOTICE

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

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

DA 24-1112
Released: October 29, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF AMERICAN NETWORK, INC. TO VIPER NETWORKS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-312

Comments Due: November 12, 2024
Reply Comments Due: November 19, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by American Network, Inc. (American Network) (Applicant), 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 for the transfer of control of American Network from Hammer Fiber Optics Holdings Corp. (Transferor or Hammer) to Viper Networks, Inc. (Transferee or Viper).²

American Network, a Delaware corporation, provides competitive local exchange service in New York City, Stonybrook, Riverhead, Spring Valley, Mount Kisco, Westchester County, and Ossining, New York. American Network, is a wholly-owned subsidiary of 1st Point Communications, LLC (1st Point), a New Jersey limited liability company, that currently provides communications services in the states of Washington, Florida, California, Alabama, New Jersey, and New York. 1st Point is wholly-owned by Hammer, a Nevada publicly-traded holding company, that does not provide any telecommunications services.

Viper, a Nevada publicly-traded corporation, does not currently provide any telecommunications services.³ Following the consummation of the proposed transaction, the following U.S. citizens will hold a 10% or greater interest in Viper: Farid Shouekani (39.58%) and Erik Levitt

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

² Domestic Section 214 Application for the Transfer of Control of American Network, Inc. to Viper Networks, Inc., WC Docket No. 24-312 (filed Sept. 25, 2024) (Application). On September 27, 2024 and October 23, 2024, Applicant filed supplements to their domestic section 214 application. Letter from Sharon Thomas, Consultant to American Network, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-312. (filed Sept. 27, 2024); Letter from Sharon Thomas, Consultant to American Network, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-312 (filed Oct. 23, 2024).

³ Applicant states that Viper does not provide any telecommunications services directly or through existing subsidiaries.

(22.31%).⁴

Pursuant to the terms of the proposed transaction, Viper will acquire 1st Point from Hammer. American Network will continue to operate as a wholly-owned subsidiary of 1st Point, which, in turn, will be wholly-owned by Viper.

Applicants assert that a grant of the application would serve the public interest, convenience, and necessity.⁵ We accept the Application for streamlined processing under section 63.03(b)(2)(i) of the Commission's rules.⁶

Domestic Section 214 Filed for the Transfer of Control of American Network, Inc. to Viper Networks, Inc., WC Docket No. 24-312 (filed Sept. 25, 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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov @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

⁴ Applicant states that no other person or entity will hold a 10% or greater interest in Viper.

⁵ Application at 4-5.

⁶ 47 CFR § 63.03(b)(2)(i).

already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.⁷ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan at (202) 418-1191.

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⁷ See 47 CFR § 1.45(c).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information: 202-418-0800
Internet: www.fcc.gov

DA 24-1113

Released: October 29, 2024

COMMENT SOUGHT ON APPLICATION OF SORENSON COMMUNICATIONS, LLC, FOR CERTIFICATION AS A PROVIDER OF VIDEO RELAY SERVICE

COMMENT SOUGHT ON APPLICATION OF CAPTIONCALL, LLC, FOR CERTIFICATION AS A PROVIDER OF INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE

CG Docket Nos. 10-51 and 03-123

Comments Due: November 13, 2024

Reply Comments Due: November 25, 2024

The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on two applications for certification to provide Internet-based telecommunications relay service (TRS) supported by the Interstate Telecommunications Relay Services (TRS) Fund: (1) the application of Sorenson Communications, LLC (Sorenson), for certification to provide Video Relay Service (VRS) supported by the Interstate Telecommunications Relay Services (TRS) Fund;¹ and (2) the application filed by CaptionCall, LLC, (CaptionCall), for certification to provide Internet Protocol Captioned Telephone Service (IP CTS) supported by the Interstate TRS Fund.² In 2022, the Bureau granted Sorenson and CaptionCall conditional certification to provide VRS and IP CTS, respectively, after the acquisition of majority ownership and control of these entities by Ariel GP Holdco, LLC (“Ariel”).³ The Bureau conditioned those grants on Sorenson and CaptionCall filing these applications for full certification under their new ownership.⁴

¹ Application of Sorenson Communications, LLC, as Majority-Owned and Controlled by Ariel GP Holdco, LLC, for Certification to Provide Video Relay Service, CG Docket Nos. 10-51 and 03-123 (filed Apr. 18, 2022) (redacted), <https://files.fcc.gov/ecfs/download/c8feb725-5343-4bc8-923d-ceaa3b454536.pdf?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>; Supplemental Update to Sorenson Communications, LLC’s Internet-Based TRS Certification Application for Video Relay Service, CG Docket No. 03-123 (filed Sept. 17, 2024) (disclosing certain previously redacted information), <https://www.fcc.gov/ecfs/document/10917001465262/1>.

² Application of CaptionCall, LLC, as Majority-Owned and Controlled by Ariel GP Holdco, LLC, for Certification to Provide Internet Protocol Captioned Telephone Service, CG Docket No. 03-123 (filed Apr. 18, 2022) (redacted), <https://files.fcc.gov/ecfs/download/c9bd9c7e-d2f3-4f85-95b4-572fd6fdf852.pdf?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>; Supplemental Update to CaptionCall LLC’s Internet-Based TRS Certification Application for Internet Protocol Captioned Telephone Service, CG Docket No. 03-123 (filed Sept. 17, 2024) (disclosing certain previously redacted information), <https://www.fcc.gov/ecfs/document/1091790168240/1>.

³ See *Grant of Conditional Certification for Sorenson Communications, LLC, to Provide Video Relay Service After Its Acquisition by Ariel GP Holdco, LLC*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 22-310 (CGB Mar. 23, 2022); *Grant of Conditional Certification for CaptionCall, LLC, to Provide Internet Protocol Captioned Telephone Service After Its Acquisition by Ariel GP Holdco, LLC*, CG Docket No. 03-123, Public Notice, DA 22-311 (CGB Mar. 23, 2022).

⁴ The conditional certifications for Sorenson and CaptionCall were initially set to expire on March 23, 2024. The Bureau has extended the conditional certifications through December 31, 2024. See *Extension of Conditional* (continued....)

Both Sorenson and CaptionCall have redacted portions of their applications for which they request confidential treatment.⁵ Access to the redacted material is governed by the Third Protective Order in this docket.⁶

Filing Requirements. Interested parties may file comments on or before the dates indicated above. All filings must reference CG Docket Nos. 10-51 and 03-123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷

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

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.⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission

(Continued from previous page) _____
Certifications of CaptionCall, LLC, and Sorenson Communications, LLC, to Provide Telecommunications Relay Services, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 24-281 (Mar. 20, 2024).

⁵ In the Supplemental Updates to their applications, Sorenson and CaptionCall have disclosed certain previously redacted information. See *supra* notes 1 & 2.

⁶ See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (CGB 2018).

⁷ *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

⁸ 47 CFR §§ 1.1200 *et seq.*

staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

Additional Information. For further information regarding this Notice, please contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716 or by e-mail to William.Wallace@fcc.gov.

– FCC –



PUBLIC NOTICE

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

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

DA 24-1114
Released: October 30, 2024

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

WC Docket No(s). 24-447

Comments Due: November 14, 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 30, 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 **November 14, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

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

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

⁶ 47 CFR § 1.1200 *et seq.*

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

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

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Appendix

- 1) **Applicant(s): AT&T Services, Inc., on behalf of its affiliate, Alascom, Inc. dba AT&T Alaska**
WC Docket No. 24-447, Comp. Pol. File No. 1955
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-447%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-447%22)))
Affected Service(s) – AT&T Residential Long Distance Service and AT&T Business Long-Distance Service
Service Area(s) – Akutan, Alakanuk, Aniak, Bethel, Chefornek, Chevak, Dillingham, Eek, Ekwok, Emmonak, Galena, Golovin, Goodnews Bay, Holy Cross, Iliamna, King Cove, King Salmon, Kipnuk, Koliganek, Kongiganak, Levelock, Manokotak, Marshall, Mountain Village, New Stuyahok, Nome, Nondalton, Pilot Station, Quinhagak, Russian Mission, St. Mary's, Sand Point, Scammon Bay, Shageluk, Stebbins, Togiak, Toksook Bay, Tununak, Twin Hills, Unalakleet, Unalaska, and White Mountain, Alaska.
Authorized Date(s) – November 30, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau



DA 24-1115

Released: October 30, 2024

**T-MOBILE AND USCELLULAR SEEK FCC CONSENT TO
THE PROPOSED TRANSFER OF CONTROL AND ASSIGNMENT
OF CERTAIN SPECTRUM LICENSES, AUTHORIZATIONS, AND
SPECTRUM LEASES HELD BY USCELLULAR TO T-MOBILE**

GN Docket No. 24-286

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: December 9, 2024
Oppositions Due: January 8, 2025
Replies Due: January 28, 2025

I. INTRODUCTION

T-Mobile US, Inc. (T-Mobile) and United States Cellular Corporation (UScellular) (T-Mobile and UScellular together, the Applicants) have filed applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act),¹ seeking Federal Communications Commission (Commission or FCC) consent to the transfer of control and assignment of certain spectrum licenses, an international section 214 authorization, and spectrum leases held by UScellular and its subsidiaries to T-Mobile.² In addition, as part of the proposed transaction, to assist with transitioning UScellular's customers to T-Mobile's network, the parties have filed a series of short-term spectrum manager leases for a period not to exceed one year after the closing of this transaction.³

According to the Applicants, under the proposed transaction, T-Mobile would acquire UScellular's wireless operations, customers, and approximately 30% of UScellular's licensed spectrum.⁴

¹ 47 U.S.C. §§ 214, 310(d).

² Applications of T-Mobile US, Inc. and United States Cellular Corporation for Transfer of Control and Assignment of Certain Licenses, Authorizations, and Leases, GN Docket No. 24-286, ULS File No. 0011180491 (Lead Section 310(d) Application) (filed Sept. 13, 2024); Application of T-Mobile US, Inc. and United States Cellular Corporation for Assignment of International Section 214 Authorization, ICFS File No. ITC-ASG-20240913-00139 (filed Sept. 13, 2024) (Section 214 Application) (T-Mobile/UScellular Applications).

³ ULS File Nos. 0011238584, 0011238592, 0011238601, 0011238603, 0011238613, 0011238632, 0011238666, 0011238691, 0011238698, 0011238702, 0011238705, 0011238719, 0011238724, 0011238738, 0011238760, 0011238774, 0011238798, 0011238815, 0011238817, 0011238822, 0011238828, 0011238837, 0011238842, 0011238848, 0011238851, 0011238855, 0011238857, 0011238867, 0011238872, 0011238876, 0011238882, 0011238887, 0011238905, 0011238908, 0011238911, 0011238914, 0011238918, 0011238922, and 0011238928 (filed Sept. 12, 2024).

⁴ UScellular has separately announced plans to assign a portion of its remaining spectrum and has filed an application for the assignment of some of this spectrum. *See, e.g.*, Application for Assignment from United States Cellular Operating Company LLC to Nsight Spectrum, LLC, ULS File No. 0011246540 (filed Oct. 18, 2024); Press (continued....)

The proposed transaction would involve two major steps: (1) the restructuring of USCellular such that the assets being sold to T-Mobile would be moved into USCC Wireless Holdings, LLC (Holdings), a Delaware Limited Liability Company;⁵ and (2) the transfer of Holdings from USCellular to T-Mobile USA, Inc., which is a wholly owned direct subsidiary of T-Mobile.⁶ As a result of the transaction, Holdings and its subsidiaries would be indirect, wholly owned subsidiaries of T-Mobile, and their Commission licenses and authorizations would be indirectly controlled by T-Mobile.

T-Mobile is controlled by Deutsche Telekom AG (DT), a German corporation.⁷ Deutsche Telekom Holding B.V., a Netherlands entity and an indirect wholly owned subsidiary of DT, holds a direct 50.42% equity and voting interest in T-Mobile.⁸ In addition, DT holds proxy to vote additional shares of T-Mobile. As a result, DT has an indirect 50.42% equity interest and 100% voting interest in T-Mobile.⁹ The Applicants state that they have an existing foreign ownership ruling under section 310(b)(4) of the Act¹⁰ that covers the licenses and spectrum leases being acquired in the transaction.¹¹

The Applicants have submitted a spectrum aggregation chart (Appendix G: Aggregation Chart) that indicates that T-Mobile would be acquiring 10 to 131.5 megahertz of spectrum in 808 counties across the United States. According to the Applicants' spectrum aggregation chart, in counties where T-Mobile

(Continued from previous page)

Release, USCellular, USCellular Announces Sale of Select Spectrum Assets for \$1.0 Billion (Oct. 18, 2024), <https://investors.uscellular.com/news/news-details/2024/USCellular-announces-sale-of-select-spectrum-assets-for-1.0-billion/default.aspx>. In addition, T-Mobile has filed applications to acquire three authorized dealers for USCellular—Iowa RSA No. 12 Limited Partnership, Iowa RSA No. 9 Limited Partnership, and Farmers Cellular Telephone Company, Inc. On October 3, 2024, Iowa RSA No. 12 Limited Partnership filed an application to assign 33 common carrier microwave licenses (ULS File No. 0011260184), and on October 4, 2024, filed an application to assign its International section 214 authorization to T-Mobile USA, Inc. (File No. ITC-ASG-20241004-00147). On October 3, 2024, Iowa RSA No. 9 Limited Partnership filed an application to assign three common carrier microwave licenses (ULS File No. 0011260245), and on October 4, 2024, filed an application to assign its International section 214 authorization to T-Mobile USA, Inc. (File No. ITC-ASG-20241004-00146). Also on October 3, 2024, Farmers Cellular Telephone Company, Inc. filed an application to assign 16 common carrier microwave licenses (ULS File No. 0011260245), and on October 4, 2024, filed an application to assign its International section 214 authorization to T-Mobile USA, Inc. (File No. ITC-ASG-20241004-00145).

⁵ The spectrum licenses and authorizations being sold to T-Mobile will be moved into Holdings, with the exception of two USCellular subsidiaries, USCC Services, LLC and United States Cellular Operating Company of Chicago, LLC, which will become subsidiaries of Holdings.

⁶ Holdings and its subsidiaries, and their FCC licenses, will transfer to T-Mobile during this step. These steps would be effectuated immediately before, and in connection with, the closing of this transaction.

⁷ Public Interest Statement at 2.

⁸ Section 214 Application (response to 63.18(h)).

⁹ Section 214 Application (response to 63.18(h)). Kreditanstalt für Wiederaufbau (KfW), a bank controlled by the German government, has a 13.97% direct ownership interest in DT. The Federal Republic of Germany has an 80% ownership interest in KfW and a direct 14.21% ownership interest in DT. *Id.*

¹⁰ 47 U.S.C. § 310(b)(4). Section 310(b)(4) establishes a 25% benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio licensee. A foreign individual, government, or entity may own, directly or indirectly, more than 25% (and up to 100%) of the stock of a U.S.-organized entity that holds a controlling interest in a broadcast, common carrier, or aeronautical radio licensee, unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.

¹¹ Public Interest Statement at 44-45 (citing *Applications of T-Mobile US, Inc. and Sprint Corporation for Transfer of Control of Licenses and Authorizations, et al.*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10738-39, paras. 361-63 (2019) (*T-Mobile-Sprint Order*)).

is gaining spectrum and there is geographical overlap, T-Mobile would hold a maximum of 381 megahertz of spectrum post-transaction.¹²

In the *Executive Branch Review Process Order*, the Commission set out categories of applications with reportable foreign ownership that may be excluded from referral to the Executive Branch for review for national security, law enforcement, foreign policy and trade policy issues.¹³ The Applicants state that the Applications should be exempt from referral for Executive Branch review under section 1.40001(a)(2)(iii) of the Commission's rules¹⁴ because: (1) T-Mobile is subject to an agreement with an Executive Branch agency concerning national security and/or law enforcement;¹⁵ (2) there are no new reportable foreign owners of T-Mobile since the effective date of that agreement; and (3) T-Mobile agrees to continue to comply with the terms of that agreement.¹⁶ The Applicants also state that the Applications should be exempt from referral for Executive Branch review under section 1.40001(a)(2)(iv) because T-Mobile was reviewed by the Executive Branch within the past 18 months without the Executive Branch requesting that the Commission condition T-Mobile's international section 214 authorization on compliance with an agreement with an Executive Branch agency concerning national security and/or law enforcement;¹⁷ and there are no new reportable foreign owners of T-Mobile since that review.¹⁸ We find that the Applications come within an exclusion from referral and thus we are exercising our discretion and are not referring the Applications to the Executive Branch.¹⁹ While we are not formally referring the Applications, we will provide a courtesy copy of this *Public Notice* to the Executive Branch agencies.²⁰

II. SECTION 310(d) APPLICATIONS

Parts 24, 27, 30, and 101—Wireless Radio Services

The following applications for consent to the transfer of control and assignment of licenses held by subsidiaries of UScellular from UScellular to T-Mobile have been assigned the file numbers listed below:

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0011180491 ²¹	UNITED STATES CELLULAR OPERATING COMPANY LLC	WHT381

¹² T-Mobile has submitted applications to sell its 3.45 GHz spectrum holdings to SoniqWave Network, LLC and N77 License Co LLC and does not include these spectrum holdings in its spectrum totals. See T-Mobile/UScellular Applications, Public Interest Statement at 37; see also ULS Lead File Nos. 0011016799 and 0011241041. Further, T-Mobile does not include its 800 MHz spectrum holdings in its spectrum totals. See T-Mobile/UScellular Applications, Public Interest Statement at 37.

¹³ *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, 10938-42, paras. 29-39 (2020) (*Executive Branch Review Process Order*).

¹⁴ 47 CFR § 1.40001(a)(2)(iii).

¹⁵ Section 214 Application (response to section 63.18(p)) (citing *T-Mobile-Sprint Order*, 34 FCC Rcd at 10734-35, paras. 353-54).

¹⁶ Section 214 Application (response to section 63.18(p)).

¹⁷ See Letter from Sean Conway, Deputy Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, FCC File Nos. ITC-T/C-20230406-00043, ITC-T/C-20230406-00044, GN Docket No. 23-171 (filed Dec. 26, 2023).

¹⁸ Section 214 Application (response to section 63.18(p)).

¹⁹ *Executive Branch Review Process Order*, 35 FCC Rcd at 10941, 10957-58, para. 36 & n.99, para. 81 & n.205.

²⁰ *Id.* at 10939, para. 30 & n.81.

²¹ This application is the lead application for the wireless radio services.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0011227092	Advantage Spectrum, L.P.	WQXW424
0011227112	Advantage Spectrum, L.P.	WQXW422
0011227171	Advantage Spectrum, L.P.	WQXW427
0011227216	Advantage Spectrum, L.P.	WQXW509
0011181428	BANGOR CELLULAR TELEPHONE, L.P.	WLT437
0011181434	CALIFORNIA RURAL SERVICE AREA #1, INC.	WLR339
0011181438	CEDAR RAPIDS CELLULAR TELEPHONE, L.P.	WLT332
0011181441	DUBUQUE CELLULAR TELEPHONE, L.P.	WLT769
0011181447	HARDY CELLULAR TELEPHONE COMPANY	WMG753
0011181450	JACKSONVILLE CELLULAR TELEPHONE COMPANY	WLL515
0011181454	KANSAS #15 LIMITED PARTNERSHIP	WMK428
0011181460	KENOSHA CELLULAR TELEPHONE, L.P.	WLS605
0011227307	King Street Wireless, LP	WQLE654
0011227342	King Street Wireless, LP	WQLE660
0011227390	King Street Wireless, LP	WQLE657
0011181463	MADISON CELLULAR TELEPHONE COMPANY	WPOV373
0011181470	MAINE RSA #1, INC.	WMQ586
0011181472	MAINE RSA #1, INC.	KNLF933
0011181481	MAINE RSA #4, INC.	WPJD830
0011181484	MCDANIEL CELLULAR TELEPHONE COMPANY	WLU826
0011181494	NH #1 RURAL CELLULAR, INC.	WLK946
0011181500	OREGON RSA #2, INC.	WLS661
0011181505	OREGON RSA #2, INC.	WQYB217
0011181509	PCS WISCONSIN, LLC	KNLG200
0011181514	RACINE CELLULAR TELEPHONE COMPANY	WML773
0011181520	UNITED STATES CELLULAR OPERATING COMPANY LLC	WQUI699
0011164921	UNITED STATES CELLULAR OPERATING COMPANY OF CHICAGO, LLC	WQNT941
0011181533	UNITED STATES CELLULAR OPERATING COMPANY OF KNOXVILLE	WLB807
0011181544	UNITED STATES CELLULAR OPERATING COMPANY OF MEDFORD	WLR434
0011237194	UNITED STATES CELLULAR OPERATING COMPANY OF MEDFORD	WQZM894
0011164929	USCC SERVICES, LLC	WRJI984
0011181548	USCOC NEBRASKA/KANSAS, LLC	WLS717
0011181557	USCOC NEBRASKA/KANSAS, LLC	WQGD659
0011181560	USCOC OF CENTRAL ILLINOIS, LLC	WHA717
0011181565	USCOC OF CUMBERLAND, LLC	WLV260
0011181572	USCOC OF GREATER IOWA, LLC	WHB481
0011181577	USCOC OF GREATER IOWA, LLC	KNLF881
0011181583	USCOC OF GREATER MISSOURI, LLC	WLR440
0011181586	USCOC OF GREATER NORTH CAROLINA, LLC	WLL518
0011181592	USCOC OF GREATER OKLAHOMA, LLC	WLA261
0011181599	USCOC OF GREATER OKLAHOMA, LLC	KNLF590
0011181602	USCOC OF LACROSSE, LLC	WLU542
0011181615	USCOC OF OREGON RSA #5, INC.	WMQ867
0011237204	USCOC OF OREGON RSA #5, INC.	WQZM878
0011181631	USCOC OF PENNSYLVANIA RSA NO. 10-B2, LLC	WQVL740
0011181634	USCOC OF RICHLAND, INC.	WLS669
0011181641	USCOC OF VIRGINIA RSA #3, INC.	WMJ224

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0011181643	USCOC OF WASHINGTON-4, INC.	WLS666
0011181650	VERMONT RSA NO. 2-B2, INC.	WPOR638
0011181659	WESTERN SUB-RSA LIMITED PARTNERSHIP	WMS469
0011181669	YAKIMA MSA LIMITED PARTNERSHIP	WMR566

Part 27 – Wireless Radio Services Spectrum Leasing Arrangements

The following applications for consent to the transfer of control of spectrum leasing arrangements, pursuant to which subsidiaries of UScellular are the spectrum lessee, from UScellular to T-Mobile have been assigned the file numbers listed below:

<u>File No.</u>	<u>Lessee/Sublessee</u>	<u>Lead Call Sign or Lease ID</u>
7007ATNL24	USCC Services, LLC	WQXW422 ²²
7008WYNL24	USCC Services, LLC	WQLE654 ²³
0011239681	USCC Services, LLC	L000043874

III. INTERNATIONAL SECTION 214 AUTHORIZATION

The following application for consent to the assignment of international Section 214 authorization held by USCC Wireless Holdings, LLC, a subsidiary of UScellular, to T-Mobile has been assigned the file number listed below:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20240913-00139	USCC Wireless Holdings, LLC	ITC-214-19981009-00698

IV. *EX PARTE* STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,²⁴ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We have previously announced that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.²⁵

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁶ Entities or 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). Entities or 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

²² See also Sublease File Number 6053ATSL24 (filed Sept. 13, 2024) for related sublease application.

²³ See also Sublease File Number 6054WYSL24 (filed Sept. 13, 2024) for related sublease application.

²⁴ 47 CFR § 1.1200(a).

²⁵ 47 CFR § 1.1206. *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, Public Notice, DA 24-925 (WTB/OEA Sept. 11, 2024).

²⁶ 47 CFR §§ 1.1200 *et seq.*

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).²⁷ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

V. REQUESTS FOR *EX PARTE* MEETINGS

All requests for meetings with Commission staff regarding this docket should be made to Morasha Younger, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, morasha.younger@fcc.gov.

VI. GENERAL INFORMATION

The assignment and transfer of control applications listed above 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 or policies.

Interested parties must file petitions to deny no later than **December 9, 2024**. Entities and persons that file petitions to deny become parties to the proceeding. Such entities or persons may participate fully in the proceeding, which includes: (1) seeking access to any confidential information that may be filed under a protective order; (2) seeking reconsideration of decision(s); and (3) filing appeals of a final decision by courts. Commenters may also become parties to the proceeding for the purpose of seeking access to confidential information filed under a protective order. Oppositions to such pleadings must be filed no later than **January 8, 2025**. Replies to such pleadings must be filed no later than **January 28, 2025**. All filings concerning matters referenced in this *Public Notice* should refer to GN Docket No. 24-286.

To allow the Commission to consider fully all substantive issues regarding the applications and the proposed transaction in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in its initial filings. New issues may not be raised in responses or replies.²⁸ 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, which 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.

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 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.

²⁷ 47 CFR § 1.1206(b).

²⁸ 47 CFR § 1.45(c).

- 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).

One copy of each pleading, *ex parte* submission, or other filing 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, 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) Monica DeLong, Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau, at monica.delong@fcc.gov; (4) Stephanie Asous, Mobility Division, Wireless Telecommunications Bureau, at stephanie.asous@fcc.gov; (5) Nadja Sodos-Wallace, Broadband Division, Wireless Telecommunications Bureau, at nadja.sodoswallace@fcc.gov; and (6) 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: (1) GN Docket No. 24-286; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., GN docket No. 24-286, Widget Corp., Notice of *Ex Parte* Communications).

The application and any associated documents are available for public inspection and copying during normal reference room hours, at the following Commission office: FCC Reference Information Center, 45 L Street, NE, Room 1.150, Washington, D.C. 20554. The exhibits and declarations associated with the proposed transaction are available electronically through ECFS, which may be accessed on the Commission's Internet website. In addition, the applications are available electronically through ULS, which also may be accessed on the Commission's Internet website. Further information regarding this proposed transaction will be available on the FCC's Office of General Counsel's T-Mobile/UScellular website, <https://www.fcc.gov/transaction/t-mobile-uscellular>, which will contain an unofficial listing and electronic copies of materials on this matter.

-FCC-



PUBLIC NOTICE

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

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

DA 24-1116
Released: October 31, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 24-295

The Wireline Competition Bureau (Bureau) grants the application listed in this Public Notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 CFR § 63.03. The Bureau determined that a grant of this application serves the public interest.¹ For the purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this Public Notice.² Should no petition for reconsideration, application for review, or petition for judicial review be timely filed, the proceeding listed in this Public Notice shall be terminated, and the docket will be closed.

Domestic Section 214 Application Filed for the Transfer of Control of
QualStar Communications, Inc.,
WC Docket No. 24-295, Public Notice, DA 24-1016 (WCB 2024).

Effective Grant Date: October 31, 2024

For further information, please contact Myrva Charles at (202) 418-1506 or Megan Danner at (202) 418-1151, Competition Policy Division, Wireline Competition Bureau.

-FCC-

¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

² *Id.*; see 47 CFR § 1.4 (Computation of time).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1117

Released: October 31, 2024

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

WC Docket No. 18-89

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

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

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

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

³ See *Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRIP Granted Applications Public Notice*) (explaining that “[e]ach applicant was required to (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)

include in its application estimates for the costs that it will reasonably incur for the permanent removal, replacement, and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately \$5.6 billion in gross program support").

⁴ See 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *SCRIP Granted Applications Public Notice* at 2-3.

⁵ The Commission's rules provide that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the [Bureau] will pro-rate the available funding among all eligible providers in that prioritization category." 47 CFR § 1.50004(f)(1); see also 47 U.S.C. § 1603(d)(5)(A) ("[T]he Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.").

⁶ See 47 CFR § 1.50004(f)(1); see also *SCRIP Granted Applications Public Notice* at 2-3.

⁷ 47 U.S.C. § 1603(d)(6)(A); 47 CFR § 1.50004(h).

⁸ See 47 U.S.C. § 1603(d)(6)(C).

⁹ See 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2) ("Individual extensions. Prior to the expiration of the removal, replacement and disposal term, a Reimbursement Program recipient may petition the Wireline Competition Bureau for an extension of the term. The Wireline Competition Bureau may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.").

¹⁰ 47 CFR § 1.50004(h)(2); see also *2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173 and n.501.

¹¹ See, e.g., *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-875, para. 7 (WCB Sept. 22, 2023) (*Stealth Extension Order*) (granting an extension based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938, paras. 12-16 (WCB Oct. 10, 2023) (*WorldCell et al. Extension Order*) (granting extensions based 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 23-1016, 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, (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 25) 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

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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 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).

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 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 – Bristol Bay Cellular Partnership, SCRP0001182

Grounds for individual term extension – Bristol Bay Cellular Partnership (Bristol Bay) requests a second six-month extension of the deadline to remove, replace, and dispose of covered equipment.²⁰ Bristol Bay asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its October 25, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues and the lack of full funding. Regarding the funding shortfall, Bristol Bay states that it is a small business operating 17 remote sites in Alaska, and that due to the nature of its service area and adverse weather conditions, some sites are accessible only a few months a year and only by plane and boat.²¹ In addition, Bristol Bay states that the costs of logistics involved to serve these areas, such as air charters and fuel surcharges, have increased to the point that, when combined with the SCRP funding shortfall, SCRP costs have become unsustainable and, even though Bristol Bay has actively sought ways to self-fund the shortfall, it has been unable to do so.²² Regarding supply chain issues, Bristol Bay asserts that it has "experienced significant issues in hiring employees and contractors with skills

¹⁶ See *Report on FCC Process Reform*, GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) (*Process Reform Report*).

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 Red 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 Request of Bristol Bay Cellular Partnership for Extension of Time, WC Docket No. 18-89 (filed Oct. 21, 2024) (Bristol Bay Extension Request).

²¹ *Id.* at 1.

²² *Id.* at 1-2.

necessary to perform the work necessary to complete our project.”²³ Despite these obstacles, however, Bristol Bay states that it has made significant progress and has successfully removed all covered equipment from its network and shipped that equipment for destruction.²⁴ The Bureau finds Bristol Bay’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 funding²⁵ and supply chain issues,²⁶ and accordingly grants the requested extension through April 8, 2025.

New RRD term expiration date – Bristol Bay’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 25, 2024 to April 25, 2025.

Recipient – Mark Twain Communications Company, SCRP0001021

Grounds for individual term extension – Mark Twain Communications Company (Mark Twain) requests a second six-month extension of the deadline to remove, replace, and dispose of covered equipment.²⁷ Mark Twain asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its December 6, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues and the lack of full funding. Regarding supply chain issues, Mark Twain identifies three events that prevent it from completing its work by the current deadline. First, although Mark Twain has completed removing all covered communications equipment from its network, the vendor it hired has yet to provide the necessary disposal documentation as outlined in DA 21-1234.²⁸ Mark Twain states that it continues to work with the vendor and a third-party recycler to complete the disposal process and obtain the necessary documentation, but the vendor has yet to provide a deliverable date.²⁹ Second, while Mark Twain purchased core equipment in 2021 to replace its Huawei core, the vendor told Mark Twain a few months later that the core would be “end-of-life,” meaning the vendor would not provide support or software updates.³⁰ Mark Twain then had to find a replacement core, but due to equipment shortages and the short timeframe of the program it did not receive the new core until August 2023.³¹ While that core has now been installed, Mark Twain states that the optimization of the equipment is ongoing and will take more time. Third, Mark Twain states that it faced similar issues with microwave backhaul equipment, where it elected to order new equipment rather than a model reaching its end-of-life, but for which the vendor has given a lead time beyond the current December 6, 2024 deadline.³² Despite these

²³ *Id.* at 1.

²⁴ *Id.* at 2.

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, 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.

²⁷ Request of Mark Twain Communications Company for Extension of Time, WC Docket No. 18-89 (filed Oct. 21, 2024) (Mark Twain Extension Request).

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

delays, Mark Twain has made continued progress, replacing 90 percent of its core equipment and completing 90 percent of the disposal work, such that it expects to be able to complete all of its obligations under the Reimbursement Program by an extended deadline of June 6, 2025.³³ The Bureau finds Mark Twain'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,³⁴ and accordingly grants the requested extension.

New RRD term expiration date – Mark Twain'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 December 6, 2024 to June 6, 2025.

Recipient – NE Colorado Cellular, Inc d/b/a Viaero Wireless, SCRP0001110, SCRP0001113, SCRP0001114, SCRP0001115, SCRP0001118, SCRP0001119, SCRP0001120, SCRP0001122, SCRP0001123, SCRP0001124, SCRP0001125, SCRP0001126, SCRP0001135, SCRP0001141

Grounds for individual term extension – NE Colorado Cellular, Inc d/b/a Viaero Wireless (NE Colorado) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) for the applications listed above.³⁵ NE Colorado asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by the deadlines for those applications, which range from November 2 to December 15, 2024, has, through no fault of its own, been materially affected by the lack of full funding. NE Colorado states that the limited funding has forced it to reprioritize where it sends work in order to focus on completing work at the sites already under construction, and that this focus on completing portions of the project in clusters has caused it to make limited progress at other sites, which will require more time to be completed.³⁶ NE Colorado also states that the lack of full funding has caused it to release some construction crews, leading to project delays, and also that its primary vendor has pulled its construction crews because NE Colorado has not received the funding needed to pay for scheduled work.³⁷ NE

(Continued from previous page)

³² *Id.*

³³ *Id.* at 3.

³⁴ 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.

³⁵ See Request of NE Colorado for Extension of Time for Application SCRP1110, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1113, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1114, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1118, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1119, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1120, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1122, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1123, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1124, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1125, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1126, WC Docket No. 18-89 (filed Sept. 26, 2024); Request of NE Colorado for Extension of Time for Application SCRP1135, WC Docket No. 18-89 (filed Sept. 26, 2024); and Request of NE Colorado for Extension of Time for Application SCRP1141, WC Docket No. 18-89 (filed Sept. 26, 2024). This would be the third six-month extension for Applications SCRP0001110 and SCRP0001141 and the second six-month extension for all the other Application numbers listed for NE Colorado.

³⁶ See, e.g., NE Colorado Request for Extension for Application SCRP0001118 at 2.

Colorado adds that the lack of full funding has impaired its ability to order replacement equipment and that it has been forced to limit or postpone some equipment orders and cancel or postpone others due to the lack of full funding.³⁸ That being said, NE Colorado states that it has worked to mitigate the impact of the lack of full funding by continually reevaluating its project plan and timelines and that it has completed a substantial amount of work, such as completing the deployment of core equipment at its network operations centers, completing delivery of onsite hardware and software, migrating all of its voice and data traffic off of the Huawei cores, and completing a substantial amount of site preparation.³⁹ The Bureau finds NE Colorado'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,⁴⁰ and accordingly grants the requested extensions for the application numbers listed above.

New RRD term expiration date – NE Colorado's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED as follows:

- For File No. SCRP0001110, from November 3, 2024 to May 3, 2025;
- For File No. SCRP0001113, from December 3, 2024 to June 3, 2025;
- For File No. SCRP0001114, from December 3, 2024 to June 3, 2025;
- For File No. SCRP0001115, from December 10, 2024 to June 10, 2025;
- For File No. SCRP0001118, from December 6, 2024 to June 6, 2025;
- For File No. SCRP0001119, from December 7, 2024 to June 7, 2025;
- For File No. SCRP0001120, from December 15, 2024 to June 15, 2025;
- For File No. SCRP0001122, from December 10, 2024 to June 10, 2025;
- For File No. SCRP0001123, from December 7, 2024 to June 7, 2025;
- For File No. SCRP0001124, from December 13, 2024 to June 13, 2025;
- For File No. SCRP0001125, from December 10, 2024 to June 10, 2025;
- For File No. SCRP0001126, from December 3, 2024 to June 3, 2025;
- For File No. SCRP0001135, from December 7, 2024 to June 7, 2025; and
- For File No. SCRP0001141, from November 18, 2024 to May 18, 2025.

Recipient – Point Broadband Fiber Holding, LLC, SCRP0001128, SCRP0001129, SCRP0001130, SCRP0001131, SCRP0001132

Grounds for individual term extension – Point Broadband Fiber Holding, LLC (Point Broadband) 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) for the applications listed above.⁴¹ Point Broadband asserts that its ability to complete the removal,

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³⁷ *Id.*

³⁸ *Id.* at 2-3.

³⁹ *Id.* at 2.

⁴⁰ 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.

⁴¹ See Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1128, WC Docket No. 18-89 (filed Oct. 8, 2024); Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1128, WC Docket No. 18-89 (filed Oct. 8, 2024); Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1129, WC Docket No. 18-89 (filed Oct. 8, 2024); Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1130, WC Docket No. 18-89 (filed Oct. 8, 2024); and Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1131,

(continued....)

replacement, and disposal of covered equipment and services by the deadlines for those applications, which range from October 29 to November 13, 2024, has, through no fault of its own, been materially affected by the lack of full funding. Specifically, Point Broadband states that as a small, rural provider it lacks the resources to complete its project with internal funds, and only has enough resources to focus on one part of the project at a time.⁴² This, in turn, prevents it from completing its work by the current deadline, as the first step is to complete the 2.5 GHz wireless tower equipment changeouts, which have been delayed by nesting birds on the towers that hinder Point Broadband's tower crews when trying to complete the changeouts.⁴³ And while Point Broadband believes it can complete those changeouts within the time allowed by a six-month extension, it still only has resources to focus on one project at a time, so its next step would be to complete the changeout of almost 200 routers, which cannot begin until Point Broadband first migrates 4,000 customers off the Fiber to the Home (FTTH) systems that are still connected to Huawei routers.⁴⁴ That, however, requires a Point Broadband technician to have an on-site visit at the customer's location to facilitate the changeouts, and despite Point Broadband's scheduling efforts, completing these visits will depend on customer availability and cooperation, meaning the visits will take some time to complete.⁴⁵ In this regard, we note that the delays are like those that warranted an extension for Puerto Rico Telephone Co., where its ability to complete its SCRP project depended on the cooperation of individual customers in returning equipment and scheduling on-site visits.⁴⁶ The Bureau finds Point Broadband'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,⁴⁷ and the need to coordinate on-site visits that depend on the cooperation of customers,⁴⁸ and accordingly grants the requested extensions for the application numbers listed above.

New RRD term expiration date – Point Broadband's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED for the applications listed above as follows:

- For File No. SCRP0001128, from November 10, 2024 to May 10, 2025;
- For File No. SCRP0001129, from November 11, 2024 to May 11, 2025;
- For File No. SCRP0001130, from November 13, 2024 to May 13, 2025;
- For File No. SCRP0001131, from October 29, 2024 to April 29, 2025; and
- For File No. SCRP0001132, from November 13, 2024 to May 13, 2025.

Recipient – United Wireless Communications, Inc. SCRP0001104

(Continued from previous page)

WC Docket No. 18-89 (filed Oct. 4, 2024); Request of Point Broadband Fiber Holding LLC for Extension of Time for Application SCRP1132, WC Docket No. 18-89 (filed Oct. 8, 2024).

⁴² See, e.g., Point Broadband Extension Request for SCRP0001128 at 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, DA 24-709, WC Docket No. 18-89, Order, para. 5 (WCB July 22, 2024) (*Puerto Rico Extension Order*).

⁴⁷ 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.

⁴⁸ *Puerto Rico Extension Order* at 3, para. 5.

Grounds for individual term extension – United Wireless Communications, Inc. (United Wireless) 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) for the applications listed above.⁴⁹ United Wireless asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its October 21, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues. Specifically, United Wireless states that it has made significant progress since receiving its first term extension, removing the final 10 percent of its covered equipment and disposing of the remaining 50 percent of its covered equipment, so that now it has completed the removal and disposal process, along with 99 percent of its replacement process.⁵⁰ Nevertheless, United Wireless states that it needs additional time to complete the last part of its replacement process, namely the installation of 13 generators and network testing, which has been repeatedly delayed due to supply chain delays.⁵¹ United Wireless ordered and installed its generators in three phases, but delivery for the first phase was more than 200 days late, and the generators delivered for the second phase were missing transfer switches that required several months to be replaced.⁵² It states that these delays, in turn, mean that installation of the third batch of generators has not yet begun. United Wireless also needs additional time to complete network testing, which has been delayed because some testing could not begin until primary network components were finished being replaced, which did not happen until September 2024.⁵³ Finally, United Wireless states it has been delayed in replacement of its IMS core due to the vendor unexpectedly sunsetting the type of core United Wireless intended to use.⁵⁴ United Wireless has been able to select a new vendor for the replacement core, but an exact timeline for installation has not been set.⁵⁵ The Bureau finds United Wireless'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,⁵⁶ and accordingly grants the requested extension.

New RRD term expiration date – United Wireless'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 21, 2024 to April 21, 2025.

For additional information concerning this Public Notice, please contact Ty Covey in the Competition Policy Division, Wireline Competition Bureau, at ty.covey@fcc.gov or (202) 418-1372.

- FCC -

⁴⁹ See Request of United Wireless Communications, Inc. for Extension of Time, WC Docket No. 18-89 (filed Oct. 10, 2024) (United Wireless Extension Request).

⁵⁰ *Id.* at 1.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1-2.

⁵⁴ *Id.* at 2.

⁵⁵ *Id.*

⁵⁶ 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

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DA No. 24-1118

Report No. SCL-00493

Friday, November 1, 2024

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rod 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.

Pacific Carriage Limited Inc. (PCLI) and Southern Cross Cables Limited (SCCL, and together with PCLI, the Applicants) filed an application for a new 25-year cable landing license for the Southern Cross 1&2 system (formerly known as Southern Cross Cable Network), SCL-MOD-20200709-00027 (original File Nos. SCL-LIC-19971014-00009, SCL-97-005). The Southern Cross 1&2 system's initial 25-year license will expire on November 15, 2025. The Applicants requested that the new 25-year term commence on the date of grant of the Application. The Applicants filed supplemental letters on March 23, 2024 and June 28, 2024. The Application was placed on public notice on July 26, 2024. File No. SCL-LIC-20231117-00038, Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00476S, Public Notice (OIA July 26, 2024) (Public Notice). No comments were filed.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR §1.767(b); Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022). See Streamlined Submarine Cable Landing License Applications, Accepted For Filing, Report No. SCL-00468S, Public Notice, June 21, 2024. The Commission has obtained the approval of the Department of State to grant this application consistent with Executive Order 10530 of May 10, 1954.

Licensing History. In 1998, the Commission granted a cable landing license for the Southern Cross 1&2 system (then called the Southern Cross cable system) to MFS International, Inc. See MFS International, Inc., Application for a License to Land and Operate in the United States a Common Carrier Fiber Optic Submarine Cable Extending Between the United States and Australia and New Zealand, File No. SCL-97-005, Cable Landing License, 13 FCC Rcd 2932 (IB-TD 1998). In 1999, the Commission modified the Southern Cross cable system license to, among other things, add a landing point in Suva, Fiji and add Pacific Carriage Limited (PCLI's predecessor) as a licensee. See MFS International, Inc., MFS Globenet, Inc., Pacific Carriage Limited, Application for Modification of License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Among the United States and Australia and New Zealand, File No. SCL-MOD-19990216-00002, Modification of Cable Landing License, 14 FCC Rcd 13912 (IB-TD 1999). The Southern Cross 1&2 system became operational on November 15, 2000. See Letter from Kent Bressie, Counsel for Pacific Carriage Limited, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in SCL-LIC-19971014-00009 (dated June 18, 2018) (available on the FCC website through the International Communications Filing System (ICFS) by searching for SCL-LIC-19971014-00009 and accessing "Other filings related to this application" from the Document Viewing area).

In 2000, the Commission modified the license to add a landing point at the Nedonna Beach station in Rockaway Beach, Oregon. See MFS Globenet, Inc. Pacific Carriage Limited, Application for Modification of License to Land and Operate in the United States a Private Fiber Submarine Cable System Extending Among the United States and Australia and New Zealand, File No. SCL-MOD-20000201-00002, Modification of Cable Landing License, 15 FCC Rcd 10145 (IB-TD 2000).

In 2020, the Commission modified the Southern Cross 1&2 system (then called the Southern Cross Network) license to condition it on compliance with the commitments and undertakings contained in the July 3, 2020 letter from Laurie Miller, President and Chief Executive Officer, Pacific Carriage Limited Inc. and Pacific Carriage Limited, to the Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy and Plans, Department of Homeland Security; John W. Wilmer, III, Deputy Chief Information Officer for Cybersecurity, U.S. Department of Defense; and Mark Hakun, Principal Director, Deputy Chief Information Officer for Cybersecurity, U.S. Department of Defense (2020 LOA). See File No. SCL-MOD-20200709-00027, Actions Taken Under Cable Landing License Act, Public Notice, Report No. SCL-00277, 35 FCC Rcd 8078 (IB-TAD 2020).

The Applicants request an additional 25-year term for the continued operation of the Southern Cross 1&2 system, with the understanding that upon decommissioning the last segment of the Southern Cross 1&2 system prior to expiration of that term, they would surrender the license. The Applicants state that Southern Cross 1&2 "continues to perform operationally" and provides low-latency and diverse connectivity on U.S.-South Pacific routes where capacity demand increases each year. The Applicants contend that the Southern Cross 1&2 system offers capacity in large increments and complements the existing Southern Cross NEXT cable system to form a robust Southern Cross ecosystem to provide more resilient services to their own customers while generally strengthening the resilience of connectivity on U.S.-South Pacific routes.

Actions Taken: (1) Grant of a cable landing license to Pacific Carriage Limited Inc. (PCLI) and Southern Cross Cables Limited (SCCL) for a period of 25 years to authorize the continued landing and operation of the Southern Cross 1&2 system, a non-common carrier fiber-optic submarine cable system connecting the mainland United States (Oregon and California) with Hawaii, Fiji, New Zealand, and Australia, as conditioned in this Public Notice; and (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license.

Licensee Information. PCLI is a Delaware corporation that is a wholly owned subsidiary of Pacific Carriage Holdings Limited Inc. (PCHLI), a Delaware investment corporation. Three entities hold direct 10 percent or greater interests in PCHLI: (1) TCNZ (Bermuda) Limited, a New Zealand investment company (40.51% voting and equity); (2) Optus Networks Pty Limited, an Australia telecommunications company (32.40% voting and equity); and (3) Telstra Holdings Pty Limited, an Australia investment company (25.00% voting and equity).

TCNZ (Bermuda) Limited is a wholly owned subsidiary of Spark New Zealand Limited (Spark), a New Zealand telecommunications company.

The Applicants state that Spark's shares are traded publicly on New Zealand's Exchange and are widely held, with no investor holding a 10% or greater direct or indirect voting or equity interest in PCHLI or SCCL.

Optus Networks Pty Limited is a wholly owned subsidiary of Singtel Optus Pty Limited, an Australia telecommunications company, which in turn is a wholly owned subsidiary of Singapore Telecom Australia Investments Pty Limited, an Australia investment holding company, which in turn is a wholly owned subsidiary of SingTel Australia Investment Ltd (Singtel Australia), a British Virgin Islands investment holding company.

Singapore Telecom Mobile Pte Limited (Singtel Mobile), an Australia investment holding company, holds a 52% voting and equity interest in Singtel Australia. Singapore Telecommunications Limited (Singtel), a Singapore telecommunications company, holds a 48% voting and equity interest in Singtel Australia. Singtel is 52% owned (voting and equity) by Temasek Holdings (Private) Limited (Temasek), a Singapore investment holding company. Temasek is wholly owned by the Government of Singapore through the Minister for Finance. The Applicants state that Singtel's shares trade on the Singapore Exchange and are widely held, and that no investor holding any of Singtel's publicly traded shares holds a 10-percent-or-greater direct or indirect interest in PCLL.

Telstra Holdings Pty Limited is a wholly owned subsidiary of Telstra International Holdings Pty Ltd, an Australia holding company, which in turn is a wholly owned subsidiary of Telstra Group Limited (Telstra Group), an Australia telecommunications holding company. The Applicants state that Telstra Group is traded publicly on the Australian Securities Exchange and shares are widely held. The Applicants report that as of May 31, 2024, four entities have 5% or greater direct or indirect interest in Telstra Group: HSBC Custody Nominees (Australia) Limited (HSBC), an Australia asset management company that owns 22.2% (voting and equity) of Telstra Group; J.P. Morgan Nominees Australia Limited, an Australia asset management company that owns 11.1% (voting and equity) of Telstra Group; Citicorp Nominees Pty Limited, an Australia asset management company that owns 9.8% (voting and equity) of Telstra Group; and BNP Paribas Nominees Pty Limited, an Australia asset management company that owns 6.5% (voting and equity) of Telstra Group. The Applicants state that as of May 31, 2024, the largest single shareholding custodially held by HSBC was 2.2%, by JP Morgan Nominees Australia Limited was 1.8%, by Citicorp Nominees Pty Limited was 1.2%, and by BNP Paribas Nominees Pty Limited was 3.2%.

SCCL is a Bermuda private limited company that is a wholly owned subsidiary of Southern Cross Cables Holdings Limited (SCCHL), a Bermuda investment company. Three entities hold direct 10% or greater interests in SCCHL: (1) TCNZ (Bermuda) Limited (40.51% voting and equity); (2) SingTel Elnvestments Pte Ltd, a Singapore investment company (32.40% voting and equity); and (3) Telstra Holdings Pty Limited (25.0% voting and equity). SingTel Elnvestments Pte Ltd is a wholly owned subsidiary of Singtel.

Cable Design and Capacity. Southern Cross 1&2 is a single system with a "figure eight" configuration that connects the mainland United States (Oregon and California) with Hawaii, Fiji, New Zealand, and Australia. Southern Cross 1 refers to the northern traffic path on the system between Nedonna Beach, Oregon; Kahe Point, Hawaii; Suva, Fiji; and Sydney, Australia. Southern Cross 2 refers to the southern traffic path on the system between Morro Bay, California; Spencer Beach, Hawaii; Tapakuna, New Zealand; and Sydney, Australia. A Hawaii Inter-Island traffic path uses a three-fiber pair cable to interconnect the Kahe Point (in Oahu) and Spencer Beach landing stations. The Applicants state that Southern Cross 1&2 and the Southern Cross NEXT system, for which PCLL and SCCL are the licensees (SCL-LIC-20190809-00026), operate together as the Southern Cross ecosystem. The Southern Cross 1&2 system has a design capacity of 18 Tbps, with an active capacity of 13.4 Tbps. Available capacity (equipped but not allocated to specific customers) is 200 Gbps.

Ownership of the Cable System. The Applicants state that PCLL owns the portion of the wet segment of the Southern Cross 1&2 system in the U.S. territorial sea. The Applicants state that SCCL owns the wet segment of the system beyond the territorial sea of any landing and is the only entity that owns a five-percent-or-greater interest in the Southern Cross 1&2 system and uses the U.S. endpoints. The Applicants further state that PCLL retains operational control over the system facilities in the U.S. cable stations and provides direction with respect to the systems and services provided by the owners of the buildings and real property.

Waiver Request. The Applicants request a waiver of section 1.767(h)(1) of the Commission's rules so that Hawaiian Telcom Inc. (HTI), Hawaiian Telcom Services Company, Inc. (HTSC), Verizon, and WCIC Cable Inc. (WCIC), owners or co-owners of the U.S. cable landing stations, are not required to be applicants for the Southern Cross 1&2 system landing license. HTI owns the cable landing station in Spencer Beach; WCIC owns the cable landing station at Nedonna Beach; Verizon owns the cable landing station at Morro Bay; and PCLL owns the cable landing station at Kahe Point, and contracts with Verizon for landing party services (maintenance and security) there, which Verizon subcontracts to HTI. Section 1.767(h)(1) requires that "[a]ny entity that owns or controls a cable landing station in the United States" shall be "applicant for, and licensee on, a cable landing license." 47 CFR § 1.767(h)(1). The Applicants state that HTI, HTSC, Verizon, and WCIC provide "routine maintenance and security services" at the U.S. landing stations they each own, but that "none of HTI, HTSC, Verizon, or WCIC will have any ability to affect significantly the operation of Southern Cross 1&2." The Applicants also state that HTI, HTSC, Verizon, and WCIC have entered into a long-term lease with PCLL for colocation space for power feed equipment and will retain operational authority over the Southern Cross 1&2 system landing facilities and provide direction to each of HTI, HTSC, Verizon, and WCIC in all matters relating to the Southern Cross 1&2 system. Finally, the Applicants state that PCLL will ensure that the lease has an initial term, with extension options at the sole discretion of PCLL, for the remaining useful life of the Southern Cross 1&2 system.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. Although HTI owns the cable landing station in Spencer Beach; WCIC owns the cable landing station at Nedonna Beach; and Verizon owns the cable landing station at Morro Bay, we find that, based on the agreements between the Applicant and the cable station owners described above, HTI, HTSC, Verizon, and WCIC will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant Applicants a waiver of section 1.767(h)(1) and do not require HTI, HTSC, Verizon, and WCIC to be applicants/licensees for the Southern Cross 1 & 2 cable.

Regulatory Status. Southern Cross 1&2 is currently operated as common carrier cable system. The Applicants propose to operate the Southern Cross 1&2 system on a non-common carrier basis under the new license. The Applicants argue that the Southern Cross 1&2 system should not be subject to common carrier regulation because it will not operate on a common carrier basis. Rather than sell capacity indifferently to the public, the Applicants state that they will "sell bulk capacity to particular carrier, enterprise, and Internet content customers pursuant to individually-negotiated indefeasible rights of use (IRUs) and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser." The Applicants also contend that continued operation of the cable poses no competitive or other public interest concerns, but will instead contribute to "vigorous competition with other submarine cable systems on U.S.-South Pacific routes." The Applicants state the Southern Cross 1&2 system competes with a number of cables on the U.S.-Australia route (e.g., Hawaiki system and the Australia-Japan Cable); U.S.-New Zealand route (e.g., Hawaiki system); U.S.-Fiji route (e.g., Manatua and Honatua systems); and U.S. mainland-Hawaii route (e.g., Hawaiki system and the Asia-America Gateway (AAG) system).

The Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70;

—Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67. —

Executive Branch Review. The Applicants request that the Commission condition grant of the Application on their continued compliance with the commitments and undertakings contained in the 2020 LOA. The Applicants assert that referral of the application to the Executive Branch for national security, law enforcement, foreign policy and trade policy review is not necessary. The Applicants note that the Executive Branch agencies did not require SCCL to be a party to the 2020 LOA.

Pursuant to Commission rules, we exercised our discretion and did not refer this application to the Executive Branch for national security, law enforcement, foreign policy and trade policy review. Unlike most cable landing license applications, this application involves an existing facility with a mitigation agreement specific to the cable system and that was agreed to in 2020. The application does not propose any changes to the cable system since the 2020 LOA was entered into and there have been no substantive changes in the foreign ownership since the 2020 LOA was entered into by the relevant parties. Thus, we find that this application presents a low or minimal risk to national security, law enforcement, foreign policy, and trade policy. See Public Notice at 3. Although we did not refer this application, we provided a courtesy copy of the accepted for filing public notice to the Executive Branch agencies. Public Notice at 3, citing Executive Branch Review Process Order, 35 FCC Rcd 10927, 10941, para. 36, n. 99; see also *id.* at 10957, para 81, n.205. The agencies did not file comments.

Conditions and Requirements. The Applicants 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).

We grant the Applicants' request and condition grant of the application on their continued compliance with commitments and undertakings contained in the 2020 LOA. The 2020 LOA is publicly available and may be viewed on the FCC website through the ICFS by searching for SCL-LIC-20231117-00038 and accessing "Other filings related to this application" from the Document Viewing area.

The Applicants are affiliated with a foreign carrier (Spark New Zealand Trading Limited) that is presumed to have market power in New Zealand. The Applicants must comply with the reporting requirements set forth in section 1.767(l) of the Commission's rules for the U.S.-New Zealand route. 47 CFR § 1.767(l).

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application may also result in monetary sanctions or other enforcement action by the Commission.

License Term. Under the Commission's rules, a cable landing license shall expire 25 years after the in-service date for the cable, 47 CFR 1.767(g)(15). As PCLI and SCCL requested a 25-year term for the HICS cable, and as the cable is already licensed and in-service, this license shall expire on October 31, 2049, 25 years from the grant of this cable landing license.



PUBLIC NOTICE

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DA No. 24-1119

Report No. SAT-01868

Friday, November 1, 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-20240613-00132 ☐ S3082 ICEYE US, Inc.
Special Temporary Authority

Effective Date:

Nature of Service: Earth Exploration Satellite Service

On October 30, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to ICEYE US, Inc. for a period of up to 60 days to operate two low-Earth orbit, non-geostationary satellites, X17 and X24, in the Earth Exploration-Satellite Service, including conducting synthetic aperture radar (SAR) imaging in the 9100-9900 MHz (space-to-Earth) band down to a perigee altitude of 400 kilometers.

SAT-STA-20241009-00215 ☐ S2368 Intelsat License LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/29/2024

Nature of Service: Other

On October 29, 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 conduct telemetry, tracking and command (TT&C) operations necessary to de-orbit Intelsat 19 from the 157.1° W.L. orbital location. Intelsat conducts TT&C using the following center frequencies: 11696 MHz and 11697 MHz (space-to-Earth), and 13995 MHz and 14498.5 MHz (Earth-to-space).

SAT-STA-20241010-00231 ☐ S3086 Intelsat License LLC
Special Temporary Authority
Grant of Authority

Effective Date: 10/29/2024

Nature of Service: Fixed Satellite Service

On October 29, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for an additional period of 60 days, for the Intelsat 80a space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.8-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

SAT-STA-20241029-00240 E

Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 10/31/2024

On October 31, 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 (TT&C) operations necessary to deorbit Galaxy 11 from the 166.3° E.L. orbital location. Intelsat conducts TT&C 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).

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



PUBLIC NOTICE

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DA 24-1121

Released: November 1, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON POINT BROADBAND FIBER HOLDING, LLC'S PETITION FOR RELINQUISHMENT OF ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

WC Docket No. 09-197

Comment Date: December 2, 2024

Reply Comment Date: December 17, 2024

The Wireline Competition Bureau (Bureau) seeks comment on a petition for relinquishment of Eligible Telecommunications Carrier (ETC) designation pursuant to 47 U.S.C. § 214(e)(4) filed by Point Broadband Fiber Holding, LLC (Point Broadband).¹ Point Broadband seeks this relinquishment in connection with the approval and consummation of a transaction transferring a portion of its Rural Digital Opportunity (RDOF) authorized support and associated obligations to R.M. Greene, Inc. aka Beam (Beam).²

Filing Requirements. Interested parties may file comments on or before the **December 2, 2024** and reply comments on or before **December 17, 2024**.³ All filings must refer to WC Docket No. 09-197.⁴ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵

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

¹ Notice of Point Broadband of Partial Relinquishment of ETC Designation, WC Docket No. 09-197, at 1 (filed June 13, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106130703417814>.

² *Domestic Section 214 Application Granted for the Transfer of Control of Certain Authorizations of Point Broadband Fiber Holding, LLC to R.M. Greene, Inc. aka Beam*, WC Docket No. 22-344, Public Notice, 38 FCC Rcd 5791 (WCB 2023); *Telecommunications Carriers Eligible for Universal Service Support et. al.*, WC Docket. No. 09-197, Order, 38 FCC Rcd 5781 (WCB 2023).

³ See 47 CFR §§ 1.2, 1.405, and 1.419.

⁴ All filings relating to this Public Notice should refer *only* to the docket listed above.

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

- 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.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information.

For further information regarding this Notice, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-7400 or via email at Nissa.Laughner@fcc.gov.

⁶ 47 CFR §§ 1.1200 *et seq.*



DA 24-1122

Enforcement Advisory No. 2024-03

Released: November 4, 2024

FCC ENFORCEMENT ADVISORY

REMINDER: AMATEUR AND PERSONAL RADIO SERVICES LICENSEES AND OPERATORS MAY NOT USE RADIO EQUIPMENT TO COMMIT OR FACILITATE CRIMINAL ACTS

The Enforcement Bureau (Bureau) of the Federal Communications Commission issues this Enforcement Advisory to remind licensees in the Amateur Radio Service, as well as licensees and operators in the Personal Radio Services, that the Commission prohibits the use of radios in those services to commit or facilitate criminal acts. The Bureau recognizes that these services can be used for a wide range of permitted and socially beneficial purposes, including emergency communications and speech that is protected under the First Amendment of the U.S. Constitution. **Amateur and Personal Radio Services, however, may not be used to commit or facilitate crimes.**

The Bureau reminds amateur licensees that they are prohibited from transmitting “communications intended to facilitate a criminal act” or “messages encoded for the purpose of obscuring their meaning.”¹ Likewise, individuals operating radios in the Personal Radio Services, a category that includes Citizens Band radios, Family Radio Service walkie-talkies, and General Mobile Radio Service, are prohibited from using those radios “in connection with any activity which is against Federal, State or local law.”² Individuals using radios in the Amateur or Personal Radio Services in this manner may be subject to severe penalties, including significant fines, seizure of the offending equipment, and, in some cases, criminal prosecution.³

Media inquiries should be directed to 202-418-0500 or MediaRelations@fcc.gov.

To file a complaint with the FCC, visit <https://consumercomplaints.fcc.gov> or call 1-888-CALL-FCC. To report a crime, contact your local law enforcement office or the FBI.

¹ 47 CFR § 97.113(a)(4); *see, e.g.*, FCC Enforcement Advisory, 37 FCC Rcd 2390 (EB Feb. 22, 2022).

² 47 CFR § 95.333(a).

³ 47 U.S.C. §§ 401, 501, 503, 510.

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).

Issued by: 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>
TTY: 1-888-835-5322

DA 24-1123

Released: November 4, 2024

WIRELINE COMPETITION BUREAU RE-AUTHORIZES ENHANCED ALTERNATIVE CONNECT AMERICA MODEL SUPPORT FOR TELEPHONE & DATA SYSTEMS AND WILKES TELEPHONE MEMBERSHIP CORPORATION

WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) re-authorizes Enhanced A-CAM support previously authorized on October 30, 2023, to Telephone & Data Systems (TDS) and Wilkes Telephone Membership Corporation (Wilkes). On September 13, 2024, the Bureau approved a transfer of control of two study areas in Virginia, Amelia Telephone Corporation and New Castle Telephone Company, from TDS Telecommunications, LLC to RiverStreet Management Services, LLC, which also does business as Wilkes.¹ On November 1, 2024, TDS notified the Commission that the transfer of control had been completed that day.² Because Enhanced A-CAM support was authorized by holding company at the state-level and TDS retains ownership of a third study area in Virginia, (Virginia Telephone Company) it is necessary for the Bureau to allocate the previously authorized Enhanced A-CAM support and deployment obligations between TDS and Wilkes.

The Bureau therefore releases today a supplemental Authorization Report specifying Enhanced A-CAM support amounts and initial deployment obligations for TDS and Wilkes in Virginia.³ The support amounts and deployment obligations are wholly consistent with Authorization Report 1.0, released on October 30, 2023, and there is no change to total authorized Enhanced A-CAM support.⁴ Neither the support amounts nor deployment obligations reflect the Interim Eligible Locations Update.⁵ Pursuant to the *Enhanced A-CAM Order*, the Bureau must finalize Enhanced A-CAM deployment

¹ See *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, Public Notice, DA 24-942 (WCB rel. Sep. 13, 2024) (authorizing the transfer of control of Amelia Telephone Corporation (Study Area Code 190217) and New Castle Telephone Company (Study Area Code 139029) from TDS to RiverStreet). For consistency with Enhanced A-CAM Authorization Report 1.0, which authorized support for RiverStreet's North Carolina affiliates as "Wilkes Telephone Membership Corporation," this Public Notice and the associated files will refer to the company as "Wilkes."

² Letter from Andrew Petersen, TDS Telecommunications Corp., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 and 24-185, filed Nov. 1, 2024.

³ Enhanced A-CAM Re-Authorization Report for TDS and Wilkes Tel. Membership Corp., available at <https://docs.fcc.gov/public/attachments/DOC-407199A1.xlsx>.

⁴ See *Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 38 FCC Rcd 10304 (WCB 2023).

⁵ See *Wireline Competition Bureau Announces An Updated Interim Eligible Locations List for Enhanced Alternative Connect America Model Mechanism*, WC Docket No. 10-90, Public Notice, DA 24-696 (WCB rel. July 17, 2024).

obligations and support amounts no later than December 31, 2025.⁶ Consistent with that process, this Authorization is subject to future adjustment. For reference purposes, the Bureau also releases Authorization Report 1.1, which reflects Authorization Report 1.0 as amended by today's re-authorization.⁷ Wilkes will be obligated to meet Enhanced A-CAM obligations in Amelia Telephone Corporation (Study Area Code 190217) and New Castle Telephone Company (Study Area Code 139029), and must report broadband deployment to required locations in those study areas in the Universal Service Administrative Company's (USAC) High-Cost Universal Broadband (HUBB) portal.

The Bureau authorizes and directs the Universal Service Administrative Company (USAC) to obligate and disburse the annual support amounts over the remainder of the 15-year Enhanced A-CAM term, beginning with November 2024 disbursements, through December 31, 2038, for TDS and RiverStreet, as reflected in the supplemental Authorization Report.⁸

For additional information on this proceeding, contact Ted Burmeister (Theodore.Burmeister@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

- FCC -

⁶ See *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 38 FCC Rcd 7040, at paras. 43, 77-78 (July 24, 2023) (*Enhanced A-CAM Order*).

⁷ Enhanced A-CAM Authorization Report 1.1, available at <https://docs.fcc.gov/public/attachments/DOC-407197A1.xlsx>.

⁸ Consistent with normal practice, November Enhanced A-CAM disbursements will be remitted in December.



PUBLIC NOTICE

Federal Communications Commission
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DA 24-1124
Released: November 4, 2024

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

WC Docket No(s). 24-265

Comments Due: November 19, 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 **December 5, 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 **November 19, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

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

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

⁶ 47 CFR § 1.1200 *et seq.*

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

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

– FCC –

Appendix

1) Applicant(s): Level 3 Telecom of Wisconsin, L.P.

WC Docket No. 24-265, Comp. Pol. File No. 1943

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-265%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-265%22)))

Affected Service(s) – Basic Business Line Service; Digital PBX Trunk Service; VersiPak Flex T-6 Service; and VersiPak Lines and Trunks Service

Service Area(s) – Brookfield, Caledonia, Milwaukee, Oak Creek, Pewaukee, South Milwaukee, Waukesha, and Wauwatosa, Wisconsin

Authorized Date(s) – December 5, 2024

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



PUBLIC NOTICE

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DA 24-1125
November 6, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 33 (OHIO) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND
800 MHZ PLANNING MEETINGS

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

The Region 33 (Ohio)¹ Public Safety Regional Planning Committees (RPCs) will hold two planning meetings on Wednesday, November 13, 2024. Beginning at 10:00 am, the 700 MHz Public Safety RPC will convene at the State of Ohio Office Building, in the MARCS Program Office Conference Room², 4200 Surface Road, Columbus, OH 43228.

The agenda for the 700 MHz meeting includes:

- Call to order and attendee introductions
- Recap of past year activities (Robert Bill)
- Discussion of pending applications, plan amendments, and other issues
- Election of Officers (Chair and Vice-Chair) for the coming year
- Subcommittee reports, new member appointments if needed
- Other business
- Adjourn

Immediately following the 700 MHz Public Safety RPC meeting, the 800 MHz Public Safety RPC will convene at the same location.

The agenda for the 800 MHz meeting includes:

- Recap of past year activities
- Discussion of pending applications, plan amendments, and other issues
- New business
- Old Business
- Adjourn

¹ The Region 33 (Ohio) 700 MHz and 800 MHz Regional Planning area includes all 88 counties in the State of Ohio.

² The State of Ohio Office is located on the West side of Columbus near the intersection of I270 & W. Broad Street.

Both Region 33 Public Safety RPC meetings are open to the public. All eligible public safety providers in Region 33 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 33 should plan to attend. For further information, please contact:

Robert M. Bill, Chairman
Region 33 700 MHz and 800 MHz Public Safety RPCs
4200 Surface Road
Columbus, Ohio 43228
(614) 207-4460
Bob.Bill@DAS.OHIO.GOV

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PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
431 STREET NE
WASHINGTON, D.C. 20554

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

DA No. 24-1126

Report No. TEL-02404

Thursday, November 7, 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-214-20231115-00142 E Splash Cellular Inc.
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action: 11/05/2024

Splash Cellular Inc. (Splash Cellular) has filed an application for authority to provide resale services in accordance with section 63.18(e)(2) of the Commission's rules, 47 CFR § 63.18(e) (2).

Splash Cellular, a Wyoming corporation, is owned by Smart Marketing Solutions Inc. (50%) and Cell Ventures LLC (50%), both Wyoming entities. Smart Marketing Solutions Inc. is wholly owned by David Schmidt, a U.S. citizen. The 10% or greater owners of Cell Ventures LLC are Simon Hoyle (50%), United Kingdom citizen, and Brent Bement (10%), a U.S. citizen.

Pursuant to Commission practice, the application for international section 214 authority was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On November 1, 2024, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

ITC-214-20240124-00017 E Popcorn Labs, 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: 11/05/2024

Popcorn Labs, Inc. (Popcorn Labs) has 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). Popcorn Labs filed a supplement on February 7, 2024.

Popcorn Labs, a Delaware limited liability company, is owned equally by three individuals: Neel Popat, a British citizen (33.3%); Lukas Kairys, a Lithuanian citizen (33.3%); and Julian Titz, A German citizen (33.3%).

Pursuant to Commission practice, the application for international section 214 authority was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On November 1, 2024, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

ITC-ASG-20240912-00138 E Northwest Communications Cooperative, Inc.
Assignment
Grant of Authority Date of Action: 11/01/2024

Current Licensee: NEMONT COMMUNICATIONS, INC.
FROM: NEMONT COMMUNICATIONS, INC.
TO: Northwest Communications Cooperative, Inc.

Northwest Communications Cooperative Inc. (NCC) has filed an application for the assignment to NCC of all assets, property, rights, interests, and customer base held by Nemont Communications Inc. (Nemont) within study area 382247 in North Dakota, including the partial assignment of the global resale authority held by Nemont (ITC-214-19970603-00299). Nemont will continue to provide international service to its remaining customers under its existing international section authority (ITC-214-19970603-00299). NCC will provide service to the newly acquired customers pursuant to its new international section 214 authorization for global resale service (ITC-214-20240912-00166). NCC is a North Dakota cooperative association in which no single member subscriber holds 10% or greater membership interest.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240927-00143 E

Endstream Communications, LLC

Transfer of Control

Grant of Authority

Date of Action: 11/01/2024

Current Licensee: Endstream Communications, LLC

FROM: Hammer Fiber Optics Holdings Corp.

TO: Viper Networks, Inc.

Endstream Communications LLC (Endstream), a New York limited liability company that holds an international section 214 authorization to provide global resale service (ITC-214-2070904-00355), filed an application for the transfer of control of Endstream from Hammer Fiber Optics Holdings Corp. (Hammer) to Viper Networks Inc. (Viper). Endstream is a direct wholly owned subsidiary of Hammer.

Pursuant to a stock purchase agreement, Viper will acquire 100% of the ownership interests in Endstream from Hammer. Viper is a publicly held Nevada corporation. According to the Applicants, post-transaction two individuals, both U.S. citizens, will hold a 10% or greater equity and voting interest in Viper: Farid Shouekani (39.58%) and Erik Levitt (22.31%).

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

INFORMATIVE

ITC-214-20230802-00106

PCCW Global, Inc.

By letter filed October 28, 2024, PCCW Global, Inc. notified the Commission of the withdrawal of its applications for consent to transfer of control of PCCW Global, Inc. from HKT (International) Limited to Infratil Digital Exchange Limited (ITC-214-20230802-00106; ITC-T/C-20230802-00097; and WC Docket No. 23-264).

ITC-T/C-20230802-00097

PCCW Global, Inc.

By letter filed October 28, 2024, PCCW Global, Inc. notified the Commission of the withdrawal of its applications for consent to transfer of control of PCCW Global, Inc. from HKT (International) Limited to Infratil Digital Exchange Limited (ITC-214-20230802-00106; ITC-T/C-20230802-00097; and WC Docket No. 23-264).

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-MS-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 or 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

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FCC ANNOUNCES NEXT MEETING OF THE TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES ON DECEMBER 5, 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 **Thursday, December 5, 2024, beginning at 10:00 a.m. EST**. Notice of this meeting was published in the Federal Register.²

At this meeting, the Task Force will vote on reports and recommendations discussed during the Task Force's term. 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. 87369 (Nov. 1, 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; Grant B. Lukas, Deputy Designated Federal Officer, at (202) 418-1057, or Grant.Lukas@fcc.gov.

-- FCC -

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

In the Matter of	)	
	)	
Data Caps in Consumer Broadband Plans	)	WC Docket No. 23-199
	)	

NOTICE OF INQUIRY

Adopted: October 2, 2024

Released: October 15, 2024

Comment Date: November 14, 2024

Reply Comment Date: December 2, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. Access to the Internet is not a luxury. It is essential for modern life. Nothing made this as clear as the COVID-19 pandemic, when people across the country turned to broadband connections to support their day-to-day activities.¹ As a result, today we are consuming more data than ever before, and the trend shows no signs of slowing down.² With many individuals and families more dependent on fixed and mobile broadband networks for work, healthcare services, education, and social activities, and an increasing number of connected devices that use the Internet for functionality, it is one of the Commission's foremost priorities to ensure consumers across the nation have meaningful access to broadband Internet services.

¹ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15655, paras. 219-20 (2022) (*2022 Communications Marketplace Report*).

² See *infra* para. 3; see also, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15563 & 15656-57, paras. 62, 221-22.

2. Fixed and mobile broadband Internet access service providers (BIAS providers) have responded to increasing demand for more data by offering higher bandwidth plans.³ Many of these BIAS providers, however, have imposed limits on data usage, or data caps, that, when exceeded, may result in higher fees and slower speeds for subscribers.⁴ With this Notice of Inquiry, we explore the use of data caps (also referred to as “usage allowances” or “usage limits”) for fixed and mobile broadband Internet service, and their corresponding impact on consumers and competition. In light of the critical importance of broadband Internet access service, we seek comment to better understand the current state of data caps and whether data caps cause harm to competition or consumers’ ability to access broadband Internet services.

II. BACKGROUND

3. The Commission has recognized that individuals living in the United States increasingly rely on fixed and mobile BIAS in order to fully participate in society.⁵ Studies show that monthly consumer broadband data usage in the United States continues to increase significantly.⁶ During the COVID-19 pandemic, the demand for BIAS increased as consumers became more dependent on Internet access for work, healthcare, civic engagement, education, and entertainment.⁷ According to OpenVault, data usage increased by 50% between the fourth quarters of 2019 and 2020 and continued to increase through 2024.⁸ The number of subscribers who consumed greater than 1 TB of data per month using fixed broadband increased by 16 percent in second quarter of 2024 over the previous year, and now accounts for almost 20 percent of all fixed broadband subscribers.⁹ OpenVault also reports that the monthly average data consumed in the second quarter of 2024 was over 585 GB.¹⁰ And in the mobile

³ See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15521-22, para. 16 (explaining that between December 31, 2019 and December 31, 2021, the number of fixed terrestrial residential connections capable of meeting a download speed threshold of 100 Mbps increased from approximately 66.4 million to 82.9 million, an increase of approximately 25 percent); Francesco Rizzato, *5G Users on Average Consume Up to 2.7x More Mobile Data Compared to 4G Users* (Oct. 21, 2020), <https://www.opensignal.com/2020/10/21/5g-users-on-average-consume-up-to-27x-more-mobile-data-compared-to-4g-users> (“Over the past ten years, mobile operators have been deploying increasingly large amounts of spectrum on their 4G networks[, and launching 5G services,] to cope with the rising demand for mobile data coming from their users.”).

⁴ See generally BroadbandNow, *Internet Providers with Data Caps*, <https://broadbandnow.com/internet-providers-with-data-caps> (last visited Aug. 29, 2024); *2022 Communications Marketplace Report*, 37 FCC Rcd at 15548, para. 42.

⁵ See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15563, para. 62.

⁶ See OpenVault, *Broadband Insights Report (OVBI) 2Q24*, <https://openvault.com/resources/ovbi> (*OpenVault OVBI Report*); see also, e.g., Sam Fischer and Margaret Harding McGill, *Broadband Usage Will Keep Growing Post-Pandemic* (May 4, 2021), <https://www.axios.com/2021/05/04/broadband-usage-post-pandemic-increase> (stating that broadband usage increased 40 percent over the past year amounting to the highest annual growth rate in nearly 10 years).

⁷ See, e.g., Daniel Frankel, *Charter Says Broadband-Only Customers Are Now Using 700 GB of Data Per Month* (Mar. 8, 2021), <https://www.nexttv.com/news/charter-says-broadband-only-customers-are-now-using-700-gb-of-data-per-a-month> (noting that the average data usage of Charter Communications broadband-only customers increased from 339 GB of data per month in January 2020 to 707 GB in 2021); OpenVault, *OVBI: COVID-19 Drove 51% Increase in Broadband Traffic in 2020* (Feb. 10, 2021), <https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020> (noting that traffic on broadband networks increased by 51% between the fourth quarters of 2019 and 2020).

⁸ *OpenVault OVBI Report* at 2-3. The weighted average combines data from usage-based pricing and fixed-rated pricing categories. *Id.*

⁹ *Id.* at 6. In addition, users consuming over 2 TB or more per month increased by 31% year-over-year (from 2.8% to 3.7%), and users consuming 5 TB or more per month increased by 77%. *Id.*

¹⁰ *Id.* at 4.

context, the Commission reported that monthly data usage per smartphone subscriber rose to an average of 12.1 GB per subscriber per month, an increase of approximately 12% from year-end 2020 to year-end 2021.¹¹

4. Data caps are restrictions set by BIAS providers on the volume of bits that a consumer can transfer during a set period of time.¹² Customers who exceed the imposed data caps may be subject to additional fees or reduced upload and download speeds. The terms “hard data caps” and “soft data caps” are often used to describe, respectively, data limits which incur additional fees, and data limits which result in reduced upload and download speeds, or throttling.¹³ When we refer to “data caps,” we include both types of arrangements as well as data limits that result in suspension or termination of access to broadband entirely.¹⁴ The use of data caps and their limits typically vary by BIAS provider even when they use the same underlying network technology to deliver BIAS.¹⁵

5. Many fixed and mobile BIAS providers temporarily or permanently refrained from enforcing or imposing data caps in response to the COVID-19 pandemic.¹⁶ Reports indicate that the temporary suspension of data caps does not appear to have significantly affected fixed network performance,¹⁷ despite the fact that demand for broadband data significantly increased during the pandemic.¹⁸ The upward trends in broadband usage have continued post-pandemic.¹⁹

¹¹ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15575, para. 80.

¹² See, e.g., Peter Holslin & Kevin Parrish, *Which Internet Service Providers Have Data Caps?* (Feb. 14, 2023), <https://www.highspeedinternet.com/resources/which-internet-service-providers-have-data-caps>; ZDNet, *Internet Data Caps: Everything You Need to Know* (Aug. 16, 2021), <https://www.zdnet.com/home-and-office/networking/internet-data-caps-everything-you-need-to-know>.

¹³ See, e.g., CenturyLink, *What Are Data Caps?* (Oct. 22, 2021), <https://discover.centurylink.com/what-are-data-caps.html>.

¹⁴ This accords with the Commission’s definition of “data cap” in the Affordable Connectivity Program context as including “[b]oth throttling (soft caps) and the termination of service if a household exceeds the data allowance.” *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13773, 13796, para. 48 (2022) (*ACP Fourth Report and Order*); see also, e.g., Open Internet Advisory Committee, *Economic Impacts of Open Internet Frameworks Working Group, Policy Issues in Data Caps and Usage-Based Pricing* at 3 (2013), <https://transition.fcc.gov/cgb/oia/Economic-Impacts.pdf>.

¹⁵ See, e.g., Peter Holslin & Kevin Parrish, *Which Internet Service Providers Have Data Caps?* (Feb. 14, 2023), <https://highspeedinternet.com/resources/which-internet-service-providers-have-data-caps> (last visited Aug. 29, 2024); BroadbandNow, *Internet Providers with Data Caps*, <https://broadbandnow.com/internet-providers-with-data-caps> (last updated Aug. 28, 2024).

¹⁶ See, e.g., Press Release, Comcast Northeast Division, *We’re Giving Our Northeast Customers More Time* (Feb. 18, 2021), <https://corporate.comcast.com/stories/were-giving-our-northeast-customers-more-time>; Jeff Baumgartner, *Comcast Will Keep Data Caps Out of the Northeast in 2022* (Dec. 15, 2021), <https://www.lightreading.com/cable-tech/comcast-will-keep-data-caps-out-of-the-northeast-in-2022/d/d-id/774117>; Jon Brodtkin, *Small ISP Cancels Data Caps Permanently After Reviewing Pandemic Usage* (June 4, 2020), <https://arstechnica.com/tech-policy/2020/06/small-isp-cancels-data-caps-permanently-after-reviewing-pandemic-usage>; Nick Statt, *Comcast and T-Mobile to Suspend Internet Data Caps for the Next 60 Days* (Mar. 13, 2020), <https://www.theverge.com/2020/3/13/21179330/comcast-t-mobile-coronavirus-data-caps-hotspots-fcc>; Press Release, T-Mobile, *Update on COVID-19 Response* (Mar. 13, 2020), <https://www.t-mobile.com/news/community/t-mobile-update-on-covid-19-response>.

¹⁷ See, e.g., FCC, *Eleventh Measuring Broadband America Fixed Broadband Report, Annex: MBA Performance During COVID-19 Pandemic* 59-62 (2021), <https://data.fcc.gov/download/measuring-broadband-america/2021/2021-Fixed-Measuring-Broadband-America-Report.pdf>.

¹⁸ See *supra* para. 3.

6. *Government Actions to Address Impact of Data Caps on Consumers.* The Commission, other parts of the U.S. Government, and states have undertaken efforts to address the potential impact of data caps. First, in the Universal Service Fund Lifeline program, the Commission established minimum service standards for data usage allowances for fixed and mobile broadband plans that are eligible for a Lifeline discount.²⁰ The minimum service standards are evaluated annually to ensure that low-income consumers are provided sufficient service to meet evolving data usage demands.²¹ The Commission also requires fixed eligible telecommunications carriers that receive Universal Service Fund support for deployment of voice and broadband networks to provide minimum monthly usage allowances reasonably comparable to those available through comparable offerings in urban areas.²²

7. The Commission has also taken into consideration the impact on consumers of data caps when evaluating potential transactions. As a condition of its 2016 merger with Time Warner Cable Inc. and Bright House Networks, LLC, the Commission prohibited Charter Communications, Inc. from imposing data caps or usage-based pricing until May 18, 2023, seven years after the close of the transaction.²³ In June 2020, Charter filed a petition to sunset the data caps and usage-based pricing condition, but subsequently withdrew that petition in January of 2021.²⁴ Charter has publicly indicated it does not plan to change its data caps or usage-based pricing policy even though the condition has expired.²⁵

(Continued from previous page)

¹⁹ Axios, *Broadband Usage Will Keep Growing Post-Pandemic* (May 4, 2021), <https://www.axios.com/2021/05/04/broadband-usage-post-pandemic-increase>.

²⁰ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3988-4000, paras. 69-106 (2016) (*Third Lifeline Reform Order*); 47 CFR § 54.408(b)-(c).

²¹ *Third Lifeline Reform Order*, 31 FCC Rcd at 3988-4000, paras. 69-106; 47 CFR § 54.408(b)-(c). The minimum service standard for fixed broadband data usage is 1,280 GB per month. *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, 37 FCC Rcd 8811, 8811 (WCB 2022). In July 2024, the Wireline Competition Bureau paused any increase in the Lifeline minimum service standard for mobile broadband data capacity until December 1, 2025. The standard thus continues to be 4.5 GB per month. *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order, DA 24-642, para. 10 (WCB 2024).

²² Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2023 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 14863 (2022) (WCB/OEA Urban Rate Survey Public Notice); see Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17699, para. 99 (2011) (USF/ICC Transformation Order), aff'd sub nom, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014); see 47 CFR §§ 54.308(a), 54.309(a). The Commission delegated to the Wireline Competition Bureau (Bureau) the task of setting a specific minimum usage allowance and stated that the minimum should be adjusted over time. USF/ICC Transformation Order, 26 FCC Rcd at 17699, para. 99. For 2023, the Bureau adopted a minimum monthly usage allowance of 600 GB; however, the minimum usage allowance for carriers receiving support from the Rural Digital Opportunity Fund (RDOF) is 600GB for the lowest two tiers of RDOF service and 2TB for the upper two tiers. See WCB/OEA Urban Rate Survey Public Notice, 37 FCC Rcd at 14865-66.

²³ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6543-49, Appx. B (2016) (*Charter Merger Order*).

²⁴ See *Charter Communications, Inc. Withdraws Petition to Sunset Merger Conditions*, Public Notice, 36 FCC Rcd 775 (WCB 2021).

²⁵ Jeff Baumgartner, *Charter Has No Plans to Add Data Caps When FCC Ban Lifts*, Light Reading (Apr. 4, 2023), <https://www.lightreading.com/broadband/charter-has-no-plans-to-add-data-caps-when-fcc-ban-lifts/d/d-id/784184>.

8. In November 2021, the President signed into law the Infrastructure Investment and Jobs Act (Infrastructure Act), which, among other things, transformed the short-term Emergency Broadband Benefit Program, which was established in early 2021 at the height of the COVID-19 pandemic to provide low-income households with discounted BIAS and connected devices, into the Affordable Connectivity Program (ACP).²⁶ Signaling the technical feasibility of providing broadband Internet access services that do not include usage limits, in May 2022, 20 BIAS providers committed to offer ACP households at least one high-speed Internet plan with no data caps for no more than \$30 per month.²⁷ Notably, the combined service areas for these BIAS providers covered more than 80 percent of the population of the United States.²⁸ Due to a lack of additional Congressional funding, the Commission was required to end the ACP on June 1, 2024.²⁹

9. The Infrastructure Act also authorized the Broadband Equity, Access, and Deployment (BEAD) Program.³⁰ The BEAD Program provides States and territories of the United States funding opportunities to help facilitate fixed broadband deployment to unserved locations.³¹ In May 2022, the National Telecommunications and Information Administration (NTIA) announced a Notice of Funding Opportunity for the BEAD Program, which sets forth the requirements for States and territories to receive funding.³² To participate in the BEAD program, grant recipients must ensure that subgrantees “do[] not impose data usage caps” on any plans offered over a network funded by the program.³³

10. Various states have also taken action regarding data caps. In 2021, the Pennsylvania Attorney General announced an agreement with Comcast to delay its planned implementation of data caps due to the increased importance of broadband data usage during the pandemic.³⁴ In the last few years, multiple state legislatures have introduced legislation aimed at restricting data caps.³⁵ Similarly,

²⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60102, 135 Stat. 429, 1184 (2021) (Infrastructure Act); 47 U.S.C. § 1752.

²⁷ The White House, *Fact Sheet: President Biden and Vice President Harris Reduce High-Speed Internet Costs for Millions of Americans* (May 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans>.

²⁸ *Id.*

²⁹ *Wireline Competition Bureau Announces the Final Month of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice (WCB Mar. 4, 2024); Press Release, FCC, FCC Brings Affordable Connectivity Program to a Close (May 31, 2024).

³⁰ Infrastructure Act § 60102(b)(1); 47 U.S.C. § 1702(b)(1).

³¹ See Infrastructure Act § 60102(b), (c). The term “State” is defined to include the District of Columbia and Puerto Rico. *Id.* § 60102(a)(2)(M) (citing 47 U.S.C. § 942).

³² Press Release, U.S. Dep’t of Commerce, Biden-Harris Administration Launches \$45 Billion “Internet for All” Initiative to Bring Affordable, Reliable High-Speed Internet to Everyone in America (May 13, 2022), <https://www.commerce.gov/news/press-releases/2022/05/biden-harris-administration-launches-45-billion-internet-all-initiative>.

³³ NTIA, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 68 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

³⁴ See Press Release, Pa. Att’y Gen., At AG Shapiro’s Urging, Comcast Delays New Data Thresholds (Feb. 3, 2021), <https://www.attorneygeneral.gov/taking-action/at-ag-shapiros-urging-comcast-delays-new-data-thresholds>.

³⁵ Illinois introduced legislation that, if adopted, would prohibit state-issued authorization holders from imposing data caps on broadband service provided to households. See Nat’l Conf. State Legislatures, *Net Neutrality 2022 Legislation*, <https://www.ncsl.org/technology-and-communication/net-neutrality-2022-legislation> (last updated May 4, 2022). New York adopted legislation that establishes a broadband deployment program and provides that

(continued....)

legislation has previously been introduced in Congress, including a ban on data caps that exist solely for monetary reasons.³⁶

11. *Providing Data Cap Transparency for Consumers.* The Commission also adopted a transparency rule that requires fixed and mobile BIAS providers to disclose accurate information regarding certain congestion management practices and commercial terms, including usage limits, the consequences of exceeding usage limits, and usage-based fees.³⁷ The transparency rule assists consumers by providing critical information necessary to make informed choices when purchasing BIAS, and also helps provide entrepreneurs and other small businesses by providing the information necessary to develop, market, and maintain Internet offerings.³⁸ As part of these disclosures, the *2015 Open Internet Order* required BIAS providers to specifically disclose “any data caps or allowances that are a part of the plan the consumer is purchasing, as well as the consequences of exceeding the cap or allowance (e.g., additional charges, loss of service for the remainder of the billing cycle)”³⁹ and also required that BIAS providers directly notify end users “if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user’s use of the service.”⁴⁰ The Commission eliminated the enhancements to the transparency rule in its *2017 RIF Order*, but continued to require the disclosure of “congestion management practices,” including “usage limits triggering the practices,” and “usage limits and the consequences of exceeding them.”⁴¹

12. In November 2022, the Commission adopted the *Broadband Labels Order*, which requires fixed and mobile BIAS providers to display, at the point of sale, certain information about broadband prices, introductory rates, monthly data allowances, the fees for exceeding imposed limits, broadband speeds, whether the BIAS provider participates in the ACP, and other critical BIAS information.⁴² The *Broadband Labels Order* also prescribes a label format and display location to ensure consumers can easily compare a BIAS provider’s services and services among different BIAS providers.⁴³

(Continued from previous page) _____
preference will be given to applicant providers who commit not to impose data caps on service provided to end-users. *See id.*

³⁶ *See* Uncap America Act, S.4590, 117th Cong. (2022).

³⁷ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 440, 442, paras. 220, 223 (2017) (*RIF Order*); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5669-82 (2015) (*2015 Open Internet Order*); 47 CFR § 8.1(a). The Commission recently adopted revisions to this transparency rule, which have been stayed pending judicial review; those revisions do not directly bear on disclosures regarding data caps. *See Safeguarding and Securing the Open Internet et al.*, WC Docket No. 23-320 et al., Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52, at 328-44, paras. 543-67 (May 7, 2024) (*2024 Open Internet Order*), *In re: MCP No. 185 et al.*, No. 24-700, Order (6th Cir. Aug. 1, 2024) (*per curiam* decision staying the *2024 Open Internet Order* pending review).

³⁸ *RIF Order*, 33 FCC Rcd at 438, paras. 215-16.

³⁹ *2015 Open Internet Order*, 30 FCC Rcd at 5673, para. 164.

⁴⁰ *Id.* at 5677, para. 171.

⁴¹ *RIF Order*, 33 FCC Rcd at 437-40, paras. 215-20.

⁴² *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686, 13687, 13689-90, 13696, paras. 3, 12, 35 (2022) (*Broadband Labels Order*). As part of this label, the *Broadband Labels Order* requires BIAS providers to disclose any charges or reductions in service for any data used in excess of the amount included in the plan, and to “identify the increment of additional data, e.g., ‘each additional 50GB,’ if applicable, and disclose any additional charges once the consumer exceeds the monthly data allowance.” *Id.* at 13696, para. 35.

⁴³ *Id.* at 13687, para. 3.

The Commission has sought comment on further steps to ensure that consumers have the information they need to make informed BIAS purchasing decisions, including issues related to more comprehensive pricing information, bundled plans, label accessibility, performance characteristics, service reliability, cybersecurity, network management and privacy issues, the availability of labels in multiple languages, and whether the labels should be interactive or otherwise formatted differently so the information contained in them is clearer and conveyed more effectively.⁴⁴

13. In the same month, the Commission established the ACP Transparency Data Collection (ACP Data Collection), which collected information related to the price, subscription rates, and plan characteristics of the Internet service offerings of ACP-participating providers.⁴⁵ The summary, published May 30, 2024, provided a snapshot of the broadband Internet access services nearly 20 million ACP households were receiving from 1,600 providers on August 1, 2023,⁴⁶ and included information about service plan data caps (including hard caps, soft caps, de-prioritization, and throttling), the number of subscribers who have exceeded the data cap in the previous month, the average amount by which subscribers have exceeded their cap in the previous month, and any charges for additional data usages along with the relevant increment (e.g., 1 GB, 500 MB).⁴⁷ According to the summary, approximately 48.9% of ACP subscribers were on plans that had some form of data cap.⁴⁸

III. DISCUSSION

14. In furtherance of our goal of ensuring consumers have meaningful access to BIAS, we inquire about the current state of data caps—for both fixed and mobile broadband Internet service—and how they may impact consumers and competition. We seek to better understand why the use of data caps continues to persist despite increased broadband needs of consumers and providers’ demonstrated technical ability to offer unlimited data plans. We first seek comment on current trends in consumer data usage. We next seek comment on the impact of data caps on consumers, consumers’ experience with data caps, and how consumers are informed about data caps on service offerings. We then look at the impact of data caps on competition. Lastly, we ask about our legal authority to take action regarding data caps.

A. Consumer Data Usage

15. While the past several years have shown a marked increase in data usage, we seek comment on current consumer data usage for fixed and mobile BIAS to help us understand how data caps affect consumers and competition. How much data does a typical household currently need per month to provide sufficient capacity for consumers to engage in telework and online education, access telemedicine, participate in videoconferences, stream video content, engage in online gaming, and participate in other common data-driven activities? What amount of data is necessary to enable over-the-top (OTT) services, e.g., video streaming or voice over Internet protocol services, not provided by a consumer’s BIAS provider? How do these data amounts differ based on the number of household members and the technical quality of content consumed over the broadband connection (e.g., 4K video vs. standard video)? For example, what would be a typical amount of data used per month to engage in livestreaming content creation, daily videoconferences, telemedicine functions, home alarm monitoring, Video Relay Services (VRS), and online gaming?

16. We also seek comment on the impact, if any, of the number of connected devices on data

⁴⁴ *Id.* at 13687, para. 4.

⁴⁵ *ACP Fourth Report and Order*, 37 FCC Rcd at 13774, para. 1.

⁴⁶ *The Office of Economics and Analytics and the Wireline Competition Bureau Announce Publication of Affordable Connectivity Program Transparency Data Collection Summary*, WC Docket No. 21-450, Public Notice, DA 24-504, at 1 (May 30, 2024).

⁴⁷ FCC, ACP Data Plan Updated (July 30, 2024), <https://docs.fcc.gov/public/attachments/DOC-404290A1.pdf>.

⁴⁸ *Id.* at 3.

usage. We note that a Deloitte survey reported that the average U.S. household had 21 connected devices in 2023,⁴⁹ compared to only 11 connected devices in 2019.⁵⁰ How has the increase in the number of household connected devices impacted current data usage needs? Are consumers aware of the impact that multiple connected devices or household users have on data consumption? To the extent the number of connected devices in a household effects data usage, to what extent is the average number of connected devices per household expected to continue increasing?

17. We next explore how consumer data usage needs are expected to change in the future, both in the near term and over the longer term, and the impact that data caps could have on those needs. Do commenters envision trends, such as an increasing use of Internet of Things (IoT) or artificial intelligence services, that could implicate future changes in consumer data usage? Will the continued use of data caps by BIAS providers undermine Internet adoption? What other services could significantly impact consumers' data usage in the future?⁵¹ Would acceptance of those services by households be undermined by data caps?

B. Impact of Data Caps on Consumers

18. We seek comment on how the imposition of data caps affects consumers and their use and purchase of BIAS. Specifically, we seek comment on how data caps may affect consumers' online behavior and consumer choice; the impact of data usage limits on public safety, consumer service quality, and price; and whether data caps have a disproportionate impact on certain consumers.

19. *Online Behavior and Choice.* We seek comment on how monthly data usage limits may affect consumers' online behavior and consumer choice. For example, in a 2022 report, OpenVault stated that an analysis of aggregated data revealed that U.S. consumers of fixed broadband Internet with usage-based pricing plans used an average of 501.5 GB of data per month, compared to 545.9 GB for consumers with flat-rate billing plans.⁵² Do usage limits encourage consumers to restrict their Internet use to avoid

⁴⁹ Deloitte, *Balancing Act: Seeking Just the Right Amount of Digital for a Happy, Healthy Connected Life* (Sept. 5, 2023), <https://www2.deloitte.com/us/en/insights/industry/telecommunications/connectivity-mobile-trends-survey.html#print-the-connected-consumer-survey-2023>.

⁵⁰ Kevin Westcott et al., *Build It and They Will Embrace It: Consumers Are Preparing for 5G Connectivity in the Home and on the Go* at 2 (2019), https://www2.deloitte.com/content/dam/insights/us/articles/6457_Mobile-trends-survey/DI_Build-it-and-they-will-embrace-it.pdf.

⁵¹ See, e.g., Harry Guinness, *Why Virtual Reality Needs Fiber Optic Internet* (July 12, 2021), <https://blog.frontier.com/2021/07/why-virtual-reality-needs-fiber-optic-internet> (“[T]ruly immersive VR with 4K-equivalent resolution has yet higher demands. We’re talking about needing connection speeds higher than a gigabit—more than almost any currently available home internet connection.”); Josh Hendrickson, *8K TV Has Arrived. Here’s What You Need to Know* (Jan. 6, 2020), <https://www.howtogeek.com/397365/8k-tv-has-arrived.-heres-what-you-need-to-know> (“Even if you’re lucky enough to have a gigabit connection, you may need to worry about a data cap. An hour of 8K streaming is going to burn through 75.2 GBs of data If your cap is a mere 1 TB you could easily blow through this in a week”); Ericsson, *Ericsson Mobility Report* at 22 (Nov. 2022), <https://www.ericsson.com/4ae28d/assets/local/reports-papers/mobility-report/documents/2022/ericsson-mobility-report-november-2022.pdf> (“In North America, the average monthly mobile data usage per smartphone is expected to reach 55 GB in 2028. . . . The data traffic generated per minute of use will increase significantly in line with the expected uptake of gaming, XR, and video-based apps. These experiences require higher video resolutions, increased uplink traffic, and more data from devices off-loaded to cloud computing resources to satisfy users.”); Thomas Goepel, *Artificial Intelligence and Machine Learning Require a Better Network* (Oct. 12, 2018), <https://technative.io/artificial-intelligence-and-machine-learning-require-a-better-network> (“[AI and machine learning is] extremely data intensive and often requires real-time transit and processing speeds.”).

⁵² OpenVault, *Broadband Insights Report (OVBI) 4Q22*, at 6, <https://openvault.com/resources/ovbi> (4Q22 OpenVault OVBI Report).

exceeding caps? We observe that many consumers have access to both fixed and mobile BIAS.⁵³ What effect, if any, do data caps have on consumers' decision to purchase both fixed or mobile BIAS? Are consumers who subscribe to both fixed and mobile BIAS less likely to exceed their monthly data usage allowances?

20. As the Commission has previously explained, "data caps inherently limit the use of a subscriber's broadband connection," and a "low monthly data cap can prevent subscribers from using applications requiring high bandwidth."⁵⁴ Are there certain types of BIAS uses that typically cause consumers to exceed their data caps (e.g., video streaming, video conferences, online gaming, telehealth)? Do data caps impact consumers' use of OTT applications, services, and devices? To what extent, if any, do data caps discourage consumers from purchasing and using any OTT applications, services, and devices, particularly smart devices, that may use a significant amount of data? How have data caps, and particularly service suspension, throttling, and other enforcement of data caps, affected consumers' ability to use the Internet for work, healthcare, education, commerce, civic engagement, and entertainment? What are the potential implications for free speech of data usage limits? For those states⁵⁵ that have adopted a version of the *2015 Open Internet Order's* general conduct rule, under which the Commission previously evaluated data caps,⁵⁶ have there been any state actions concerning the use of data caps for BIAS offerings that might be relevant to our inquiry?

21. *Impact on Consumer Service Quality and Price.* We seek comment on whether data caps can prevent certain users from causing congestion that degrades the service of other users. We also seek comment on whether BIAS plans with data caps allow consumers who use less data to avoid subsidizing the consumers who use more data. To what extent do service plan offerings give consumers meaningful choice between plans with data caps that are less expensive and unlimited data plans that are more expensive? If so, how much less expensive are service plans with data caps? There is some evidence that

⁵³ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270, 2024 Section 706 Report, FCC 24-27, at 50, fig. 13 (2024) (noting that 90 percent of Americans had access to both fixed and mobile broadband services as of 2022).

⁵⁴ *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, para. 45.

⁵⁵ See, e.g., 2024 Minn. Sess. Law Serv. 148 (West) (prohibiting ISPs from "unreasonably interfering with or unreasonably disadvantaging: (i) a customer's ability to select, access, and use broadband Internet service or lawful Internet content, applications, services, or devices of the customer's choice; or (ii) an edge provider's ability to provide lawful Internet content, applications, services, or devices to a customer"); ME. REV. STAT. ANN., tit. 5 § 1541-13 (requiring that a state agency or other government body "may not commit state funds" to an ISP unless the provider agrees in writing to conform to the FCC's *2015 Open Internet Order*); OR. REV. STAT. ANN. § 276A.418 (requiring that a public body may not contract with an ISP that unreasonably interferes with or disadvantages an end user's ability to "select, access and use" the Internet service or lawful "Internet content, applications or services or devices of the end user's choice" or an edge provider's ability to make such devices, "content, applications or services" available); VT. STAT. ANN. tit. 3, § 348 (requiring that an ISP contracting with Vermont for Internet service must certify its compliance with net neutrality standards, including that it does not unreasonably interfere or disadvantage either (i) a customer's ability to select and use Internet service or lawful "content, applications, services, or devices" of his/her choice or (ii) an edge provider's ability to make such "content, applications, services, or devices available").

⁵⁶ See *2015 Open Internet Order*, 30 FCC Rcd at 5668-69, para. 153 (declining to make blanket findings regarding data usage allowances, and concluding that the Commission will address concerns "under the no-unreasonable interference/disadvantage" standard on a case-by-case basis). The Commission recently voted to reinstate a general conduct rule largely mirroring the *2015 Open Internet Order's* general conduct rule. See *2024 Open Internet Order* at 309-328, paras. 513-42. That rule is currently stayed pending review of the *2024 Open Internet Order*. See *supra* note 37.

the incremental cost to provide additional data to consumers has substantially decreased over time.⁵⁷ Is this accurate, and if so, have prices decreased for consumers relative to those decreased costs?

22. *Impact on Public Safety.* We seek comment on the impact of data usage limits on public safety. In the *RIF Remand Order*, the Commission recognized that certain consumers use their broadband connections to communicate with public safety officials and access public safety information⁵⁸—do data caps impact these uses? Similarly, do data caps impact consumers’ downloading of necessary device and security updates? How do data caps affect consumers’ use of E-911 services, emergency alerts, or other public safety services offered over the Internet, if at all? We seek comment on what steps, if any, the Commission should take to ensure that public safety is not impacted by data caps. Are there steps the Commission should consider taking to encourage BIAS providers to refrain from imposing data caps during an emergency situation, such as a pandemic or a natural disaster, and if so, what circumstances should constitute an emergency situation? As noted,⁵⁹ some BIAS providers waived their data caps during the COVID-19 pandemic.⁶⁰ Should such moratoria continue to be voluntary in the future? What is the Commission’s role in ensuring that consumers have access to meaningful BIAS in times of emergency?

23. *Impact on Consumers with Disabilities.* We seek comment on whether data caps have a disproportionate impact on consumers with disabilities, and if so, what steps the Commission can take to mitigate these effects.⁶¹ For example, video relay service (VRS) is a data-intensive service that relies on broadband.⁶² Once a cap is met, the VRS user may have to purchase additional data in order continue using VRS with the same video quality. The Commission has previously encouraged BIAS providers to “explore options for increasing usage allowances for Lifeline consumers who are deaf, hard of hearing, deaf-blind, or have a speech disability and rely on video connection for Video Relay Service and point-to-point calls and other bandwidth-intensive accessibility functionalities.”⁶³ Visual interpreting apps for

⁵⁷ See Tyler Cooper, *How Much Does Data Really Cost An ISP?*, <https://broadbandnow.com/report/much-data-really-cost-isps> (last updated Aug. 14, 2024).

⁵⁸ *Restoring Internet Freedom et al.*, WC Docket Nos. 17-108 et al., Order on Remand, 35 FCC Rcd 12328, 12342-43, paras. 29-30 (2020) (stating that “the record suggests that most data communications between public safety entities and individuals likely take place over broadband Internet access services, and not enterprise or dedicated services”).

⁵⁹ See *supra* para. 6.

⁶⁰ See, e.g., Comcast Northeast Division, *We’re Giving Our Northeast Customers More Time* (Feb. 18, 2021), <https://corporate.comcast.com/stories/were-giving-our-northeast-customers-more-time>. As noted above, in February 2021, the Pennsylvania Attorney General announced that “under a set of commitments agreed upon by the . . . Attorney General . . . and Comcast, the telecommunications provider will delay its planned implementation of usage-based data overage charges to existing customers until July 2021 in its Northeast Division.” Press Release, Pa. Att’y Gen., At AG Shapiro’s Urging, Comcast Delays New Data Thresholds (Feb. 3, 2021), <https://www.attorneygeneral.gov/taking-action/at-ag-shapiros-urging-comcast-delays-new-data-thresholds>.

⁶¹ *Broadband Labels Order*, 37 FCC Rcd at 13711, para. 81 (in requiring accessible labeling formats for broadband labeling, the Commission emphasized its “continued commitment to ensuring that broadband networks are accessible to and usable by individuals with disabilities”).

⁶² See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 at 17, para. 32 n.114 (citing Telecommunications for the Deaf and Hard of Hearing, Inc. et al. Reply, GN Docket No. 22-69, at 6-9 (rec. June 30, 2022) (arguing that data caps and slow speeds can lead to digital discrimination)).

⁶³ *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect American Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3993, para. 84 n.248 (2016) (citing Letter from National Association of the Deaf et al. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al. (Mar. 23, 2016) (explaining that 500 MB per month of data will provide about 60 minutes per month of calls that are made (continued....)

people who are blind or have low vision also use broadband data. The American Foundation for the Blind noted that “assistive technologies and services, ranging from the use of multiple assistive technology devices on a single connection to visual interpreting apps and ASL [American Sign Language] interpreting . . . require significant amounts of data and low latency.”⁶⁴ How much data on average per month do people with disabilities need in order to use accessibility services and other broadband communications apps? To what extent are consumers using accessibility services exceeding data caps? How can BIAS providers ensure that overages caused by the use of accessibility services do not result in higher costs for subscribers with disabilities? For example, should BIAS providers be encouraged to consider usage exceptions for direct video calling to government agencies and business organizations that provide customer service representatives fluent in American Sign Language (ASL) to ensure more effective communication for users of ASL?⁶⁵ How can BIAS providers ensure that consumers with disabilities can use new accessibility technologies that may be developed in the future? We seek comment on what steps, if any, the Commission should take to ensure that data caps do not disproportionately impact consumers with disabilities.

24. *Impact on Low-Income Consumers.* We also seek comment on whether data caps have a disproportionate impact on low-income consumers, or consumers from historically disadvantaged communities, and if so, what steps the Commission can take to mitigate these effects. Multiple parties recently noted that low-income and historically disadvantaged households often rely on hotspots or cellular data for broadband, which can be subject to data caps and high latency.⁶⁶ Are low-income consumers and consumers from historically disadvantaged communities more likely to be offered and to purchase broadband plans with data usage limits as a cost-saving measure? Can data caps help to lower costs to make broadband more affordable for low-income consumers? Do plans with data caps allow low-income consumers who use less data to purchase less-expensive plans and avoid subsidizing the consumers who use more data? Do data caps restrict the ability of low-income consumers to use the services they need, or otherwise impact low-income consumers’ use of OTT applications, services, and devices? Have the Lifeline program or the ACP made a positive impact on low-income consumers’ access to plans without data caps? We seek comment on what steps, if any, the Commission should take to ensure that data caps do not disproportionately impact low-income consumers, or consumers from historically disadvantaged communities.

C. Data Caps Experience for Consumers

25. To help us understand how data caps affect the BIAS available to consumers and

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through a Video Relay Service or point-to-point by videophone by deaf and hard of hearing consumers who rely on video communications technology for such calls)).

⁶⁴ American Foundation for the Blind Comments, GN Docket No. 22-69, at 3 (rec. Feb. 21, 2023); *see also* American Association of People with Disabilities Comments, GN Docket No. 22-69, at 3 (rec. Feb. 21, 2023) (“Many people with disabilities may also need additional assistive technology and applications to use the internet . . . Assistive technology also often requires greater bandwidth. For disabled people (deaf people, deaf/blind, etc) that use visual language to communicate, broadband must provide adequate speeds, capacities, latency, and other quality of service metrics in a given area to support video relay service and other forms of video communication.”).

⁶⁵ *See* FCC, *Direct Video Calling (DVC)*, www.fcc.gov/dvc (last updated May 5, 2023) (promoting use of direct video calling for communication between consumers who rely on ASL and government agencies and other organizations).

⁶⁶ *See* Greenlining Institute Comments, GN Docket No. 22-69, at 4 (rec. Feb. 21, 2023); Lawyers’ Committee for Civil Rights Under Law Comments, GN Docket No. 22-69, at 23 (rec. Feb. 21, 2023) (Lawyers’ Committee Comments) (“[M]obile data caps may have an outsized effect on smartphone dependent subscribers, which include 25% of Hispanic users, 17% of Black users, and 12% of white users.”).

determine if there are steps the Commission can take to improve those services,⁶⁷ we now turn our inquiry to issues involving how consumers experience data and how BIAS providers enable consumers to manage their data usage. We specifically seek comment on how data caps influence BIAS providers' service plan offerings, the data allowances BIAS providers provide to consumers, the extent to which prices are related to the costs to provide data, how consumer data usage is measured, what tools consumers can use to manage their data usage, the extent to which consumers exceed their data caps, how data caps are enforced by BIAS providers, how unused data is treated for plans subject to data caps, and how consumers can submit complaints and resolve disputes regarding data caps with their BIAS providers.

26. At the outset we reiterate our observation that a number of fixed and mobile BIAS providers temporarily or permanently refrained from enforcing or imposing data caps in response to the COVID-19 pandemic.⁶⁸ We seek comment on the experience of consumers whose BIAS providers took these steps. Were any adverse impacts (e.g., network congestion) observed? Have BIAS providers returned to enforcing data caps on consumers' service plans? If so, what, if any, explanation did the BIAS provider offer for its reimposition of data caps? Did consumers typically exceed their plan's data caps during the period of time when data caps were not enforced? Has consumers' data usage remained at the same level as when data caps were not enforced? What percentage of consumers moved to a higher data usage plan once BIAS providers began enforcing data caps? Have BIAS providers raised their data cap thresholds since initial suspension of data cap enforcement during the pandemic?

27. *Service Plan Offerings.* We seek comment to understand how data caps affect the fixed and mobile BIAS provider service plans that are offered to consumers. To what extent can consumers choose from a range of data plans with and without data caps? What percentage of consumers have access to fixed service plans without data caps, and what percentage subscribe to fixed plans with data caps versus without? Similarly, what percentage of consumers have access to mobile service plans without data caps, and what percentage subscribe to mobile plans with data caps versus those without? Do consumers find that data caps are more common among all types of mobile BIAS providers or more common among certain types, such as mobile virtual network operators (MVNOs), and, if so, is it possible to ascertain why?⁶⁹ To what extent can consumers choose service plans with different data allowances for a given speed tier? Does the extent of choice vary depending on whether the BIAS provider is a fixed versus mobile provider? Can consumers typically choose from service plans with set amounts of data at differing price points or do BIAS providers apply a set data cap universally to all customers regardless of the service plan selected? To what extent are consumers subject to hard data caps versus soft data caps, and why might they be subject to one over the other? Do consumers sufficiently understand the difference between the two? How common is it for consumers to be subject to data caps only as part of a BIAS provider's excessive or acceptable use policy whereby a consumer's data usage may be examined and limited after a set data threshold? Does this differ depending on whether the consumer is using fixed versus mobile BIAS, and, if so, how?

28. As the Commission has previously explained, "information concerning data caps is critical to allow consumers and the Commission to determine the value provided by a service plan,"⁷⁰ and the Commission has gathered information about data caps in BIAS plans offered by ACP participating providers.⁷¹ We seek comment on the value of collecting information about data caps in all BIAS plans

⁶⁷ See generally *Broadband Labels Order*, 37 FCC Rcd at 13696, para. 35.

⁶⁸ See *supra* para. 6.

⁶⁹ MVNOs purchase mobile wireless services wholesale from facilities-based providers and resell the services to consumers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, 3738, para. 29 (2013). They generally do not own any network facilities themselves. *Id.*

⁷⁰ *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, para. 45.

⁷¹ *Id.* at 13794-96, paras. 45-48.

offered by BIAS providers. Should we collect the same categories of information that the Commission collected in the ACP Data Collection proceeding? Are there other data points we should consider requesting? How could we use the additional information to inform our decision-making, and would the benefits of collecting these data outweigh the burdens on BIAS providers?

29. *Data Allowance Amounts.* We seek information regarding the amount of data that consumers are allowed to use before being capped. At what amounts do fixed and mobile BIAS providers typically set data caps?⁷² Do BIAS providers set data caps based on average data usage among a given BIAS provider's customers or among customers generally? For customers that subscribe to MVNOs specifically, are data caps based on contract terms that restrict the amount of data the MVNO's customers can use collectively or individually in a given period? To what extent have data allowances increased or decreased over time? How have increases in consumer data usage or data speeds available to consumers affected data allowances? For example, have data caps increased or decreased proportionally to increases in data usage and/or speeds? Have data caps increased, decreased, or stayed the same relative to the incremental cost to provide data to customers?

30. To what extent does the network technology a BIAS provider uses to deliver BIAS (i.e., fiber, cable, DSL, fixed wireless, satellite, and mobile wireless) affect the consumer's data allowance? Notwithstanding differences in technologies, we reiterate that several BIAS providers suspended data caps during the height of the pandemic and their networks were able to provide consistent service during that period of significantly increased demand.⁷³ We also note that many BIAS providers are or may become subject to federal and state restrictions on the use of data caps related to funding for broadband deployment.⁷⁴ We seek comment on whether these facts indicate that BIAS providers' networks are technically capable of meeting consumer demand without the imposition of data caps.

31. *Measurement of Customer Data Usage.* We seek comment on methodologies for measuring consumer data usage. First, we seek to better understand why there does not appear to be a uniform methodology for measuring consumer data usage. Does this variability make it more difficult for consumers to assess and choose the right broadband service? Do BIAS providers make their measurement methodologies transparent to consumers, such that consumers can effectively compare the services of fixed and mobile BIAS providers? Are current data measurements based on estimates or actual usage? We also seek comment on the impact on consumers of the lack of any standardization for measuring usage. Should the Commission require BIAS providers to include information in transparency disclosures regarding their measurement methodologies and practices or consider setting standards for how BIAS providers measure data? Should the Commission consider establishing a standard that could easily be applied by the BIAS providers and understood by consumers?

32. *Consumer Tools for Managing Data Usage.* We next ask about the tools available to consumers for managing their data usage. For instance, can customers view the amount of data they have used in a pay period and, if so, how are those data presented and are they adequately explained to consumers? How accurate is the data usage information they receive? Are customers provided actual data usage or estimates? How granular is the usage information customers can access? Is data usage

⁷² See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15548-49, paras. 42-43 (reporting the average minimum data cap by technology based on then-available data and identifying data caps ranges for the largest 15 fixed broadband service providers with data caps); *id.* at 15625-26, para. 152 (indicating that "many mobile wireless 'unlimited' plans stipulated that, during times where a cell is experiencing network congestion, those subscribers' traffic would be de-prioritized at that cell if they consumed beyond a limit that was typically set around 50 GB per month").

⁷³ See Doug Brake, *Lessons from the Pandemic: Broadband Policy after COVID-19*, *Information Technology and Innovation Foundation* (July 13, 2020), <https://itif.org/publications/2020/07/13/lessons-pandemic-broadband-policy-after-covid-19> (showing home broadband traffic increased 20-40 percent at the onset of the pandemic).

⁷⁴ See *supra* paras. 7-11.

information available to customers in real time or delayed, and if it is delayed, by how long? Can consumers access historical data usage? What, if any, tools do BIAS providers make available to customers to limit their data usage? For example, are customers given the ability to restrict access to certain categories of content that typically use large amounts of data, like streaming video? For service plans that are shared among a household, can customers restrict data usage by user or device? How useful and beneficial are the tools available to consumers to manage their data usage? Are there ways these tools can be improved, or are there other tools BIAS providers could develop or provide? Should the Commission consider requiring BIAS providers to offer certain tools or set standards for how tools are provided, and if so, how? Do BIAS providers charge customers an additional fee for any data management tools? If so, should the Commission consider prohibiting this practice?

33. We also seek comment on the extent to which consumers receive information from BIAS providers about their data usage. Do BIAS providers send text, email, or other alerts to notify customers when they are approaching or have exceeded their data allowances. If so, are these alerts automatic or must customers turn them on? Should we consider requiring BIAS providers to inform customers when they are close to reaching their data cap? If so, when should this notification requirement be triggered? Is there other information BIAS providers should be required to provide consumers to help them manage their data usage?

34. *Data Overages.* We seek comment to understand the extent to which consumers exceed their data caps. How many consumers typically reach or exceed their data caps on a monthly basis, regardless of whether BIAS providers are currently or strictly enforcing data caps? What percentage of consumers pay overage charges or fees to access additional full-speed data? To what extent do these consumers exceed the cap for the additional incremental amount of data provided? For consumers that exceed their data caps but are able to continue accessing data, what is the average amount of data at which they exceed their data cap? As noted above, the Commission, as part of its ACP Data Collection, collected information about service plan data caps (including hard caps, soft caps, de-prioritization, and throttling); the number of subscribers who have exceeded the data cap in the previous month; the average amount by which subscribers have exceeded their cap in the previous month; and any charges for additional data usages along with the relevant increment (e.g., 1 GB, 500 MB).⁷⁵ Should we collect this information regarding all plans?

35. *Data Caps Enforcement Policies.* We seek information about how consumers are treated when data caps are exceeded. For example, for customers who exceed caps, do BIAS providers suspend service, throttle their services, or use some other enforcement mechanism? If data service is throttled, to what speeds do fixed or mobile BIAS providers throttle? What services are consumers able to reasonably access at throttled speeds? Can customers access additional full-speed data for a fee, and if so, is that cost applied automatically as an overage charge or optionally as a purchase? In what increments are customers able to access additional data and how do BIAS providers set those increments? Is the cost for additional data proportional to the cost for initial allotments of data? For example, if a customer receives 1 terabyte of data for \$100 in a month, is the cost of an additional 100 gigabytes \$10, or is it more or less expensive? Should the Commission consider establishing more detailed disclosure requirements or other policies concerning any of the foregoing matters?

36. We also seek to understand how strictly BIAS providers enforce their data caps. Does it differ among types of fixed BIAS providers or for mobile BIAS providers? After customers exceed their data caps, do BIAS providers provide exceptions that allow customers to reach certain services, such as public safety or other government services, without restrictions or limitations, and if so, what exceptions are provided and why? Do BIAS providers consider whether a customer has previously exceeded their data caps or take into account other unique circumstances before strict enforcement, such that some

⁷⁵ See *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, paras. 45-46; FCC, ACP Data Plan Updated (July 30, 2024), <https://docs.fcc.gov/public/attachments/DOC-404290A1.pdf>.

customers may get warnings or waivers for first offenses?

37. *Unused Data.* We seek information to understand how consumers' unused data is treated for plans subject to data caps. For example, if customers do not use their full data allowance in a monthly period, does the remaining data rollover to the next month? If so, are customers subject to specific policies regarding the use of rollover data, such as requirements that they use the data within a specific period of time? Does unused data simply "expire" at the end of a billing period?

38. *Dispute Resolution Procedures.* We seek comment on how fixed and mobile BIAS providers resolve disputes with customers regarding data caps.⁷⁶ Do BIAS providers offer their customers mechanisms to submit complaints and dispute the application of data caps, such as a challenge process? To what extent have BIAS providers been subject to litigation or arbitration regarding data caps, and what have been the outcomes of these challenges? Are there steps the Commission should take to ensure that BIAS providers meaningfully respond to and resolve complaints and disputes about data caps? What are the potential advantages and disadvantages of requiring specific procedures?

D. Notice to Consumers Regarding Data Caps

39. We seek comment on whether BIAS providers' existing disclosures regarding data caps are sufficient to allow consumers to make informed decisions about their BIAS plans. The Commission's transparency rule⁷⁷ and the *Broadband Labels Order* require BIAS providers to disclose certain information regarding their data caps to consumers.⁷⁸ In the *RIF Order*, the Commission explained that disclosures regarding network management practices must include, among other things, congestion management practices, including usage limits that trigger congestion management or other consequences for exceeding usage limits, as well as whether the BIAS provider inhibits or favors certain applications or classes of applications.⁷⁹ Additionally, it specified that commercial terms and disclosures must include prices and usage-based fees.⁸⁰ The expanded notice obligations adopted in the *Broadband Labels Order* require BIAS providers to display, at the point of sale, labels that disclose information about data allowances, among other things.⁸¹ Should the Commission consider additional disclosure requirements to ensure consumers have the information they need to make informed purchasing decisions regarding data caps?⁸² Do consumers find that BIAS providers disclose their data cap policies in a way that is easily

⁷⁶ The Commission's current transparency rule requires fixed and mobile broadband providers to disclose information regarding redress options, including "practices for resolving complaints and questions from consumers." *RIF Order*, 33 FCC Rcd at 442, para. 223.

⁷⁷ The Commission's current transparency rule requires BIAS providers to "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings." *Id.* at 437-38, para. 215; 47 CFR § 8.1(a).

⁷⁸ *Broadband Labels Order*, 37 FCC Rcd at 13687, 13696, paras. 3, 35.

⁷⁹ *RIF Order*, 33 FCC Rcd at 440-41, para. 220.

⁸⁰ *Id.* at 442, para. 223.

⁸¹ *Broadband Labels Order*, 37 FCC Rcd at 13687, 13696, paras. 3, 35.

⁸² *Cf. Federal Trade Commission v. AT&T Mobility LLC*, Stipulated Order for Permanent Injunction and Monetary Judgement, Case No. 14-CV-04785-EMC (Dec. 4, 2019) (finding that AT&T engaged in deceptive or unfair acts or practices in violation of Section 5 of the FTC Act in the marketing of mobile broadband services as a result of claims that certain customers would receive unlimited data without adequately disclosing that broadband speeds would be throttled after a certain data threshold). We note that in the *Broadband Labels* proceeding, the Commission has sought further comment on whether a broadband label link to a BIAS provider's network management practices is sufficient or if the label should include more specific disclosures about whether the

(continued....)

understandable and accessible? How and where do BIAS providers currently disclose data allowance information to consumers, e.g., in marketing materials, online account portals, monthly bills, or elsewhere?

40. We seek comment on to what extent existing disclosures are effective at informing consumers of the practical effect of data caps. Is the information BIAS providers currently are required to disclose useful in helping consumers understand how their usage consumes data and how quickly they will reach their data caps? For instance, do consumers understand how much data is used by certain Internet activities, services, or devices (e.g., web browsing; telehealth applications and monitoring; streaming video in standard definition, high definition, and 4K; alarm camera monitoring; online gaming; messaging; Internet of Things connected devices, and video conferencing)? How accurate is the typical consumer's understanding of the amount of data consumed for both fixed and mobile services? Should the Commission consider requiring BIAS providers to disclose additional information regarding data caps? If so, what additional information would be helpful for consumers? For example, should the Commission require BIAS providers to give examples of how much data is used by typical activities, services, or devices, or by number of users or devices, perhaps distinguished by fixed and mobile services, so that consumers can more easily choose which plan is right for their needs? Should BIAS providers be required to disclose this information specific to the data offered with each service plan? To what extent do BIAS providers already disclose this information? Where and how should any such information be provided to consumers by BIAS providers? For instance, should the information be proximate to or prominently accessible from locations where BIAS providers disclose data allowances, on information pages available on a BIAS provider's website, or included in BIAS providers' general terms and conditions?

41. We invite comment on what role the Commission should play in educating consumers about data consumption and how much data they may need. Pursuant to the *Broadband Labels Order*, "the Commission will consider . . . providing examples of what speeds of service are normally required for typical activities such as web surfing, streaming, messaging, and video conferencing to assist consumers in understanding BIAS offerings," as part of its consumer education materials.⁸³ Should we publish guides designed to educate consumers on how much data is needed for various online activities?⁸⁴ Should we include meanings for any terms related to data caps in the glossary the Commission will publish on its website to help consumers understand broadband labels?

E. Impact of Data Caps on Competition

42. We seek comment on whether consumers view data caps as a distinguishing factor amongst BIAS providers when multiple services are available. Is there evidence that BIAS provider data cap practices are a significant factor in consumers' choice of BIAS providers? Do data caps serve to distinguish BIAS providers' services from competitors? How does local, regional, and national competition among fixed and mobile BIAS providers relate to the imposition of data caps by BIAS providers? Do BIAS providers apply data caps universally across their service areas (except where otherwise prohibited from doing so) or do they exclude some geographic areas from data caps due to the extent of competition? If the decision to employ data caps is affected by competition in an area, is the

(Continued from previous page) _____

provider engages in blocking, throttling, and paid prioritization. *See Broadband Labels Order*, 37 FCC Rcd at 13730-31, para. 145.

⁸³ *See Broadband Labels Order*, 37 FCC Rcd at 13706, para. 62; *see also id.* at 13705, para. 59 ("We require that providers include at the bottom of all broadband labels a link to the Commission's website, where CGB will post a web page with a glossary of terms used on the label.").

⁸⁴ *See, e.g., FCC, Broadband Speed Guide*, https://www.fcc.gov/sites/default/files/broadband_speed_guide.pdf (last updated July 18, 2022); Tyler Cooper, *How Much Data Do I Need?*, <https://broadbandnow.com/guides/how-much-data-do-i-need> (last updated Mar. 1, 2021).

type of technology used by a competing BIAS provider relevant?⁸⁵

43. We also seek comment on the extent to which data caps affect competition between fixed BIAS providers' affiliated Voice over Internet Protocol (VoIP), cable television, video-on-demand (VOD), and streaming video services ("affiliated non-broadband services") and non-affiliated OTT VoIP and streaming video services. We note that many BIAS providers offer affiliated VoIP, cable television services with VOD, and streaming video services as part of bundles or special offers with their BIAS plans,⁸⁶ which often compete with non-affiliated OTT VoIP and streaming video services. To what extent do data caps impact cable television subscribership,⁸⁷ viewing of OTT streaming video services,⁸⁸ and competition from OTT VoIP services? Do data caps function as a competitive measure to encourage or promote consumer purchase of BIAS provider-affiliated non-broadband services and/or discourage customers from purchasing non-affiliated OTT VoIP and streaming video services? Are data caps effective at influencing consumers in this manner? If so, what effect do data caps have on competition between affiliated non-broadband services and non-affiliated OTT VoIP and streaming video services? We invite comment on what steps the Commission might take to ensure that data cap offerings do not hamper such competition.

44. We also seek comment on the effect that BIAS provider data usage limitations have on edge experimentation and innovation that could result in the development of OTT services and devices. Does the imposition of data caps stifle the growth of OTT services or other innovative online applications? For instance, do data caps deter innovators from developing applications, services, or devices that may use large amounts of data due to concerns, for example, that consumers may not purchase them because of data caps? How, if at all, do data caps create barriers to entry for small businesses that may create such innovative applications, services, or devices?

⁸⁵ For instance, cable provider Sparklight lifted data caps on its broadband service in certain geographic areas apparently in the wake of new competition from a fiber provider. Phillip Dampier, *The Magic of Broadband Competition: Sparklight Without Competition vs. Sparklight With Competition* (June 29, 2021), <https://stopthecap.com/2021/06/29/the-magic-of-broadband-competition-sparklight-without-competition-vs-sparklight-with-competition>. Additionally, Cox lifted data caps for some customers in areas where it faced new competition from providers offering unlimited 5G fixed wireless broadband. Phillip Dampier, *Cox Waives Its Own Data Cap When It Faces Unlimited 5G Home Wireless Competition* (Sept. 22, 2021), <https://stopthecap.com/2021/09/22/cox-waves-its-own-data-cap-when-it-faces-unlimited-5g-home-wireless-competition>.

⁸⁶ See, e.g., Xfinity, *Xfinity Internet Deals*, <https://www.xfinity.com/learn/deals/internet> (last visited Aug. 29, 2024); AT&T, *AT&T Fiber + DirecTV*, <https://www.att.com/bundles/directv-internet> (last visited Aug. 29, 2024); Verizon, *FiOS*, <https://www.verizon.com/home/internet/fios-fastest-internet> (last visited Aug. 29, 2024); Peter Hoslin, 5 *Streaming Deals You Can Get When You Sign Up for a New Internet Plan*, <https://www.highspeedinternet.com/resources/best-internet-perks> (last updated Aug. 26, 2024) (highlighting several Internet plan bundles: AT&T with HBO Max; Verizon with Disney+; T-Mobile with Paramount+; and Spectrum with Peacock Premium).

⁸⁷ See 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15654, para. 218, Fig. II.E.1 (showing that multichannel video programming (MVPD) distributor subscribership has been declining since 2013, decreasing 8.8 percent between 2020 and 2021 alone, to a total 51.3 percent at the end of 2022); Lee Rainie, *Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015* (Mar. 17, 2021), <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015> (showing that between 2015 and 2021, the share of Americans who say they watch television via cable or satellite has decreased from 76 percent to 56 percent, and a substantial number of those individuals (39 percent) have never had a cable or satellite TV subscription).

⁸⁸ See, e.g., 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15670, para. 253 (showing that from the first quarter of 2021 to the first quarter of 2022, viewing of OTT services from online video distributors on Smart TVs grew 34 percent).

F. Legal Authority for Potential Commission Action

45. As the Commission considers the impact of data caps on consumers and competition, we seek comment on our legal authority to promulgate rules in this area. Specifically, we seek comment on whether the Commission's authority to address market entry barriers related to telecommunications and information services in section 257 of the Communications Act of 1934, as amended, (Act) provides sufficient authority to take potential actions to address data caps.⁸⁹ We also seek comment generally on our ability to rely on other sources of statutory authority within the Act for potential actions related to data cap practices. For example, we seek comment on whether section 706 of the Telecommunications Act of 1996⁹⁰ would provide sufficient authority to take actions to address data caps. Can we similarly rely on our Title III spectrum licensing authority for potential actions to address data caps in the case of mobile BIAS?⁹¹ Could the Commission's oversight authority in Title III for the broadcast television and audio markets,⁹² sections 616(a) and 628 for the MVPD market,⁹³ and sections 201, 202, and 251 for telecommunications⁹⁴ provide additional authority to support potential actions to address data caps? Can the Commission address the impact of data caps on consumers with disabilities under sections 225, 255, and 617 of the Act?⁹⁵ We also invite comment on whether the Commission's section 218 authority to obtain "full and complete information" from common carriers and their affiliates to carry out its reporting obligations to Congress would be a source of authority for Commission actions addressing data cap

⁸⁹ See *RIF Order*, 33 FCC Rcd at 445-47, para. 232-33 (quoting 47 U.S.C. § 257(a)). The RAY BAUM'S Act of 2018 eliminated section 257(c) of the Act, and instead included language in new section 13 of the Act, 47 U.S.C. § 163, requiring similar review under that provision. RAY BAUM'S Act of 2018, Pub. L. No. 115-141, Div. P, §§ 401, 402(f), 132 Stat. at 1087-1089 (2018). The D.C. Circuit has acknowledged that the reporting requirement "was not altered in any material respect for purposes of the Commission's authority in this regard," see *Mozilla v. FCC*, 940 F.3d 1, 47 (D.C. Cir. 2019), and Congress emphasized that "[n]othing in this title or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.

⁹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706 (1996), codified at 47 U.S.C. § 1302. Section 706(a) requires the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by utilizing "regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." 47 U.S.C. § 1302(a). Section 706(b) requires the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market" if it determines that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. *Id.* § 1302(b).

⁹¹ 47 U.S.C. §§ 301, 303, 304, 309, 316; see also *WBEN Inc. v. United States*, 396 F.2d 601, 618 (2d Cir. 1968); *Cellco P'ship v. FCC*, 700 F.3d 534, 542-43 (D.C. Cir. 2012); *Celtronix Telemetry v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5914-15, para. 36 (2007); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15365, para. 206 (2007) (open Internet principles); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services et al.*, CC Docket No. 94-54 et al., Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16340, 16352, para. 27 (1999) (resale rule).

⁹² 47 U.S.C. § 303(f)-(h); see also *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17972-75, paras. 124-29 (2010) (*2010 Open Internet Order*).

⁹³ 47 U.S.C. §§ 536(a), 548(c); see also *2010 Open Internet Order*, 25 FCC Rcd at 17975-77, paras. 129-31.

⁹⁴ 47 U.S.C. §§ 201(b), 202(a), 251(a)(1); see also *2010 Open Internet Order*, 25 FCC Rcd at 17972-74, paras. 124-26.

⁹⁵ 47 U.S.C. §§ 225 (telecommunications relay services), 255 (accessibility of telecommunications equipment and services), 617 (access to advanced communications services).

practices.⁹⁶ Are there any other issues we should consider here related to the interplay with the *2024 Open Internet Order*?

46. We seek comment on whether we can rely on certain provisions within the Infrastructure Act to implement potential rules addressing data caps. For instance, to what extent can the Commission rely on section 60502 of the Infrastructure Act, which established the Affordable Connectivity Program, to implement such rules?⁹⁷ Would sections 60504 of the Infrastructure Act—which directed the Commission to adopt new broadband label rules⁹⁸—and section 60506 of the Infrastructure Act—which directs the Commission to adopt regulations to prevent digital discrimination of access in the provision of BIAS—provide additional authority to adopt rules addressing data cap practices?⁹⁹

47. We also seek comment on whether we can and should rely on our ancillary authority to adopt any potential proposals addressing data caps.¹⁰⁰

48. Finally, we seek comment on whether there are any legal limitations or barriers to the adoption of any rules concerning data caps, including First Amendment considerations.

IV. PROCEDURAL MATTERS

49. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰¹ 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).¹⁰² 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).¹⁰³ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

50. *Comment Filing Procedures.* Pursuant to sections 1.415, 1.419, and 1.430 of the

⁹⁶ See, e.g., 47 U.S.C. § 218; *2010 Open Internet Order*, 25 FCC Rcd at 17981, para. 137.

⁹⁷ 47 U.S.C. § 1752(b)(1); Infrastructure Act § 60502.

⁹⁸ Infrastructure Act § 60504(a); 47 U.S.C. § 1753(a).

⁹⁹ Infrastructure Act § 60506(b); 47 U.S.C. § 1754(b).

¹⁰⁰ 47 U.S.C. § 154(i); see also *Am. Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005).

¹⁰¹ 47 CFR § 1.1200 *et seq.* Although the Commission’s rules do not generally require *ex parte* presentations to be treated as “permit but disclose” in Notice of Inquiry proceedings, see *id.* § 1.1204(b)(1), we exercise our discretion in this instance, and find that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record on a matter of widespread impact. See *id.* § 1.1200.

¹⁰² *Id.* § 1.1206(b).

¹⁰³ *Id.* § 1.49(f).

Commission's rules, 47 CFR §§ 1.415, 1.419, 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (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.

51. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

52. *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.

53. *Contact Person.* For additional information on this proceeding, contact Mason Shefa, Wireline Competition Bureau, Competition Policy Division, at mason.shefa@fcc.gov or (202) 418-2494.

V. ORDERING CLAUSE

54. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2(a), 4(i), 201(b), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 201(b), 332, and 403, that this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

During the last year, nearly 3,000 people have gotten so aggravated by data caps on their internet service that they have reached out the Federal Communications Commission to register their frustration.

We are listening. Today, we start an inquiry into the state of data caps. We want to shine a light on what they mean for internet service for consumers across the country.

We are doing this to give voice to those who have told us that they lack competition and a choice of providers where they live and believe data caps are unfair.

We are doing this to give voice to those who have told us that data caps that limit their broadband usage restrict their ability to work from home.

We are doing this to give voice to those who have told us that as healthcare providers they are dialing back on telemedicine, including mental healthcare, because patients lack the capacity necessary for these services.

We are doing this to give voice to those who have disabilities and have told us that the bandwidth-intensive assistive technologies they need are hit disproportionately hard by data caps, denying them the functional equivalency they rely on under the law.

We are doing this to give voice to the students who struggle with the Homework Gap, because while they have broadband at school, their internet access at home is more limited, making it hard to complete nightly assignments and keep up in class. As one family wrote to tell us, they “take our kids to find public Wi-Fi to complete their schoolwork” because they “can’t afford \$190 a month for unlimited internet.”

Another submission to the agency came from a mother in Arizona who recently moved from an area where she had unlimited broadband to an area with only one home internet provider. She wrote: “We are a family of 4 doing fairly normal things. [One] of us works from home. The kids do their homework. We all stream music and television. Nearly every month I get a notice that we’re nearing our data cap, and then some months, we get a notice that we’ve gone over. It’s so frustrating to get multiple texts and emails about this, and I know there really isn’t anything we can do. It’s not like we’re going to stop using the internet. You just know you have to suck it up and pay their overage fee . . . I shouldn’t have to experience this stress every single month.”

To me, the word that sticks out to me in that message is “stress.” The mental toll of constantly thinking about how much you use a service that is essential for modern life is real as is the frustration of so many consumers who tell us they believe these caps are costly and unfair.

Our goal here is to understand what these caps look like now. We know that during the pandemic many fixed and mobile internet service providers refrained from enforcing or imposing data caps, suggesting that our networks have the capacity to meet consumer demand without these restrictions. We know that some providers do not have them at all. Others lifted them in network merger conditions. The bottom line is that in our post-pandemic world, so much in our lives depends on internet access and so many consumers are writing us frustrated by these restrictions.

We are going to get to the bottom of it with this inquiry. We are going to identify what is happening now and what we can do next; we are going to make sure that the consumers writing us are heard. So let’s get to it.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

In its decision to reinstate utility-style, Title II controls on the Internet, the FCC promised to forbear from all forms of price controls—namely, both *ex ante* and *ex post* rate regulation. The first crack in this commitment emerged immediately when the agency allowed New York’s price control law to move forward without the Commission stating the obvious—New York’s law is plainly preempted by the Communications Act and FCC precedent.

And with today’s Notice of Inquiry, the FCC itself starts down the path of directly regulating rates. It does so by seeking comment on controlling the price of broadband capacity (“data caps”). Prohibiting customers from choosing to purchase plans with data caps—which are more affordable than unlimited ones—necessarily regulates the service rates they are paying for.

Today’s NOI is legally infirm, too, for want of statutory authority. Indeed, the Sixth Circuit has stayed the FCC’s Title II decision, which is based on the same claims of authority that the FCC invokes today.

At bottom, then, I dissent from today’s NOI because I cannot support the Biden-Harris Administration’s inexorable march towards rate regulation and because the FCC plainly does not have the legal authority to do so.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

The public conversation on the issue this item address is replete with serious and sophisticated advocacy on the both sides of the issue. Is usage-based pricing, as some advocates claim, a way to monetize artificial scarcity in already-built network capacity, where the incremental cost of serving customers is assumed to be zero? Or is usage-based pricing, as many economists have claimed, a way to ensure that built network capacity is not exhausted through uncapped allocation of finite network resources to individual users (that is, an assumption of nonzero incremental cost of service)? It's an interesting debate—one that I have tracked closely over the years. But it is not a debate into which the Commission should wade. Because, *whether or not* usage-based pricing is pro-consumer, *regulation* of usage-based plans of *any* variety is rate regulation by another name.

Of course, my colleagues on the other side of this question will disagree (or, so I hope, as a vote for this item with full knowledge that it is rate regulation would be contrary to their public commitments). But I contend that regulation of the *essential* service components of what a BIAS provider provides to a customer at a given rate in terms of service—its speed, its quality, and, critically, its amount—is the same as regulating the rate itself.

Suppose we were a different FCC, the Federal Coffee Commission, and rather than regulating the *price* of coffee (which we have vowed not to do), we instead implement a regulation whereby consumers are entitled to free refills on their coffees. What effects might follow?

Well, I predict three things could happen: either cafés stop serving small coffees, or cafés charge a lot more for small coffees, or cafés charge a little more for *all* coffees. “Ah!” but the clever advocate rejoins, “in this analogy, already-built cafés *actually can* offer unlimited coffee for the same price as size-limited coffees. It is all of the existing plant, and employees, and advertising, and so on that represent the cost of coffee provision. The coffee *itself* is a *de minimis* cost.”

To this I reply: while skeptical, let us stipulate to that for a moment. But let us further assume, as is reasonable, that the coffee-serving capacity of the café is 20 simultaneous customers due to size considerations, and coffee enthusiasts routinely take up all of the seats with unlimited small coffees. What is the situation for the café owner? Well, she is either making less money (her revenue has been regulated downward, because previously coffee enthusiasts were paying more for large coffees), or she has auto-upregulated her revenue by charging *more* for what is now a uniformly a one-size, “unlimited coffee” plan. Had she retained her ability to limit coffee and price according to size, the marginal consumer who only wants a single small coffee would be *better* off, because they would be charged *less* for their coffee. Further, she has also lost the ability to discern *what* consumers are willing to pay for different sizes of coffee drinks, which, in a limited-coffee world, might have helped her to choose where to site a second café based on revealed consumer preference and purchasing profile.

“But,” the advocate persists, “first of all, the cost of the chair is fixed, and to serve a neighborhood of 20 people actually requires, in this case, 20 chairs. That’s just the nature of coffee provision. So why limit the amount of coffee—again, the marginal cost of which is *de minimis*—at all? The chairs and the rest of the plant are the cost. And if *every* café is put into the same position, consumer choice should hold café prices steady.”

And here I have to end my stipulation to the premise—I *don't* agree that the marginal cost of coffee is zero, actually, and not every rural consumer has a choice among equivalent cafés—and further point to the idea that tiers of coffee pricing creates pro-consumer price discrimination among coffee drinks and can increase overall revenue for the café, *which the café has demonstrated it uses to invest in more seats, more cafés, and faster coffee brewing.*

Now, a clever advocate, economist, or network engineer will be able to quibble with the fidelity of the above analogy to broadband. And fair enough. But here are two things about which they cannot quibble. One: *in a world of regulated unlimited coffee, either the cost of coffee drinks will rise, or the bottom lines of cafés will suffer*. What is that called? *Rate regulation*. Two: the reasoning *within* the Federal Coffee Commission on the topic of unlimited coffee is not better than what you've just read, which should give coffee drinkers and coffee access advocates nationwide pause.

Though only a notice of inquiry, because it is the first step down a path toward further rate regulation, I can't support the item we've brewed up here. I dissent.

In the Matter of)
)
 Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
)

Released: October 11, 2024

11776

Hurricane Milton made landfall on Florida's Gulf Coast on Wednesday, October 9.⁵ It spawned numerous tornadoes, resulted in loss of life, and caused substantial damage to homes, businesses, schools, and infrastructure, including in areas that were heavily damaged by Hurricane Helene only two weeks ago.⁶ As of October 10, more than 3.2 million homes and businesses were without power.⁷ Meteorological experts have noted the unprecedented nature of this year's hurricane season.⁸

3. *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.⁹ 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.¹⁰ Lifeline consumers residing on qualifying Tribal lands¹¹ can receive up to a \$34.25 monthly discount on Lifeline-supported service.¹² 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.¹³ 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.¹⁴ 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.¹⁵

⁵ See NBC News, *Hurricane Milton live updates: Now a monster Category 5 storm as Florida orders evacuations* (Oct. 7, 2024), <https://www.nbcnews.com/news/weather/live-blog/hurricane-milton-live-updates-rcna174253>.

⁶ See Brad Brooks and Leonara LaPeter Anton, Reuters, *Hurricane Milton spawns tornadoes, leaves millions without power in Florida* (Oct. 10, 2024), <https://www.reuters.com/world/us/hurricane-milton-weakens-it-marches-across-central-florida-homes-destroyed-2024-10-10/>; David Brennan, ABC News, *Hurricane Milton damage begins to emerge as storm passes into Atlantic Ocean* (Oct. 10, 2024), <https://abcnews.go.com/US/hurricane-milton-damage-begins-emerge-storm-passes-atlantic/story?id=114672672>; Stephen Smith, CBS News, *Hurricane Milton rips roof off Tropicana Field — Tampa Bay Rays stadium that was used as staging site for responders* (Oct. 10, 2024), <https://www.cbsnews.com/news/hurricane-milton-tropicana-field-roof-destroyed-tampa-bay-rays-stadium/>; Lexi Lonas Cochran, The Hill, *Milton and Helene leave students, schools reeling* (Oct. 10, 2024), <https://thehill.com/homenews/education/4924440-hurricane-milton-helene-florida-schools-evacuations/>.

⁷ Terry Spencer and Kate Payne, WHYY, *More than 3 million without power after Hurricane Milton slams Florida, causes deaths and flooding* (Oct. 10, 2024), <https://whyy.org/articles/hurricane-milton-slams-florida-deaths-flooding-power-lost/>.

⁸ See Seth Borenstein, Associated Press, *An unusual hurricane season goes from ultra quiet to record busy and spawns Helene and Milton* (Oct. 8, 2024), <https://apnews.com/article/hurricane-milton-helene-weird-climate-change-disaster-db98e8c9fbcc29a191c216a8bc9157f1d>.

⁹ 47 CFR § 54.401.

¹⁰ See 47 CFR § 54.403(a)(1)-(2).

¹¹ See 47 CFR § 54.400(e).

¹² See 47 CFR § 54.403(a)(3).

¹³ See 47 CFR § 54.409.

¹⁴ 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).

¹⁵ See 47 CFR § 54.410(b)(i)(B).

4. 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).¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹

III. DISCUSSION

5. 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 FEMA's IHP as a result of the impacts of Hurricane Milton. Further, we extend this waiver to all households receiving individual assistance from FEMA's IHP as a result of any hurricane or other tropical weather system that results in a Presidential declaration of emergency or major disaster declaration within six months of the adoption of this Order.²⁰ Such individuals can benefit from this relief and enter the Lifeline program for a period of up to six months after the date of the relevant declaration allowing the use of FEMA IHP in a disaster area.

6. Generally, the Commission's rules may be waived for good cause shown.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³ 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 any hurricane or other tropical

¹⁶ See 47 CFR § 54.410.

¹⁷ See, e.g., USAC, *Resolve Application Errors*, <https://www.usac.org/lifeline/national-verifier/how-to-use-nv/resolve-application-errors/> (last visited Oct. 9, 2024).

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ Applicability of this waiver to future hurricanes and other tropical weather systems is contingent upon either receiving a waiver of or complying with the requirements of the Paperwork Reduction Act, Public Law No. 104-13, applicable to the information collections associated with applying the waiver relief to each disaster. See para. 10, *infra*.

²¹ 47 CFR § 1.3.

²² *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).

²³ *Northeast Cellular*, 897 F.2d at 1166.

weather system that is declared during the next six months.²⁴ In light of the unprecedented frequency, severity, and cumulative effects of recent hurricanes, a waiver allowing expeditious Lifeline enrollment for recovery from storms that may be similarly destructive in the near future is appropriate. We note that FEMA IHP support is offered only in response to natural disasters after an assessment of several key factors such as impact to community infrastructure, casualties, disaster-related unemployment, and the existence of local resources.²⁵ Any future declared disasters tied to hurricanes and tropical weather events will therefore be of similar magnitude to the hurricanes that prompted our recent waivers, and offering similar support going forward presents greater clarity to consumers and providers that would be impacted by such events.

7. Impacted individuals will have the opportunity to enroll in the Lifeline program using their participation in FEMA IHP as the result of a hurricane or other tropical weather system as the qualifying program for up to six months after a declaration is issued during the six-month waiver period. As noted, recent storms have impacted millions.²⁶ 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.²⁷ FEMA's IHP²⁸ offers individual assistance and provides financial and direct services to eligible individuals and households affected by a disaster.²⁹ Specifically, FEMA IHP support provides "assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means."³⁰ We therefore find it appropriate to extend Lifeline support to such people. Households must apply for IHP support from FEMA, which verifies that a household's needs are directly caused by a declared disaster.³¹ With the waiver we are issuing today, 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

²⁴ 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.

²⁵ *See* 44 CFR § 206.48(b); Congressional Research Service, FEMA's Individuals and Households Program (IHP) – Implementation and Considerations for Congress, 22-23 (Mar. 22, 2024), <https://crsreports.congress.gov/product/pdf/R/R47015>.

²⁶ *See* Gerrit De Vynck, Joel Achenbach, Emily Wax-Thibodeaux, Ben Brasch, Washington Post, *As death toll mounts, Helene rescue efforts underway across Southeast* (Oct. 1, 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/>; Anna Phillips, Washington Post, *Why the Tampa Bay area is especially vulnerable as Hurricane Milton Nears* (Oct. 7, 2024), <https://www.washingtonpost.com/climate-environment/2024/10/07/tampa-bay-flood-risk/>.

²⁷ *See* 47 CFR §§ 54.400(a),(j), 54.405(e)(1).

²⁸ FEMA, *Individuals and Households Program*, <https://www.fema.gov/assistance/individual/program> (last visited Oct. 7, 2024).

²⁹ FEMA, *Individuals and Households Program*, <https://www.fema.gov/fact-sheet/individuals-and-households-program> (last visited Oct. 7, 2024).

³⁰ 44 CFR § 206.110(a).

³¹ *Id.*

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 the relevant declaration allowing for FEMA IHP issued in response to a hurricane or other tropical weather system. 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. Additionally, for the six-month period of this waiver, we delegate to the Bureau the ability to implement a similar eligibility waiver and permit FEMA IHP qualification for Lifeline participation for other disasters of similar magnitude that are not hurricanes or other tropical weather systems. If the Bureau finds that such relief is warranted, the opportunity for new enrollments will similarly be limited to six months from the date of the relevant emergency declaration.

9. To implement this waiver, we direct USAC, the Lifeline program administrator, to put processes and procedures into effect that will allow impacted consumers 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. 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

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 a household's participation in FEMA's IHP.

³³ See USAC, *What is a Household?*, <https://www.lifelinesupport.org/what-is-a-household/> (last visited Oct. 7, 2024).

³⁴ 47 CFR §§ 54.405(e)(4), 54.410(f).

³⁵ See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 et al., Order, DA 24-1025 (WCB 2024).

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 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 and its application to Hurricane Milton. Accordingly, we will not submit to OMB for review the information collection requirements that we describe in this Order. For future relevant declarations, we direct the Wireline Competition Bureau, in coordination with the Office of Managing Director, to seek similar specific relief from OMB and announce that relief, once obtained, via a Public Notice. The future waiver relief described in this Order shall not be applicable for any hurricane or other tropical weather system until either the Wireline Competition Bureau has obtained a PRA waiver specific to that disaster or OMB has granted approval to collect the relevant information under the PRA (or the Commission has voted to proceed with the collection notwithstanding OMB’s disapproval).

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

³⁶ 47 CFR § 54.405(b).

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

In the Matter of	)	
	)	
ESPN, Inc.	)	File No.: EB-IHD-23-00035802
	)	NAL/Acct. No.: 202432080027
	)	FRN: 0001548064

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 10, 2024

Released: October 17, 2024

By the Commission: Commissioner Simington dissenting.

I. INTRODUCTION

1. We propose a penalty of \$146,976, the statutory maximum for six apparent violations by a Federal Communications Commission (Commission or FCC) regulatee, against ESPN, Inc. (ESPN) for apparently willfully and repeatedly violating the FCC's rules that prohibit the transmission of, or causing the transmission of, false or deceptive emergency alert system (EAS) codes or the EAS Attention Signal, or simulations thereof (together, EAS Tones). On October 20, 2023, October 23, 2023, and October 24, 2023, ESPN apparently transmitted, or caused the transmission of, EAS codes during a promotional segment (Promo Spot) concerning the start of the 2023-2024 National Basketball Association (NBA) season in the absence of any actual emergency, authorized test of the EAS, or qualified public service announcement (PSA).

2. The EAS is a national system that federal, state, and local government authorities use to disseminate public warnings of impending emergencies, such as hurricanes and other dangerous weather conditions, wildfires, and child abductions (AMBER alerts), over broadcast, cable, and satellite networks to consumers' radios, televisions, and other audio and video devices.¹ Broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers also are required to supply the communications capability for delivery of nationwide messages to the American public during a national emergency via the EAS.²

3. To preserve the unique purpose and effectiveness of the EAS Tones, the Commission enforces laws that prohibit their use or simulation,³ except for specific Permitted Uses.⁴ The Commission

¹ See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844, 11845, para. 4 (2022).

² See *Fox Corporation d/b/a Fox Television Stations, LLC et al.*, Notice of Apparent Liability for Forfeiture, FCC 23-4, 2023 WL 1067995, at *1, para. 2 (2023) (forfeiture paid) (*Fox NAL*); *CBS Broadcasting Inc. d/b/a CBS Television Network, CBS Television Stations, Inc., CBS Stations Group of Texas LLC, CBS LITV LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 8417, 8417, para. 1 (2019) (forfeiture paid) (*CBS NAL*); FEMA, *Emergency Alert System*, <https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public/emergency-alert-system> (last visited Mar. 14, 2024).

³ A "simulation" of the EAS tones includes not only recordings of actual EAS codes or Attention Signal, see 47 CFR § 11.31, but also sounds that mimic or are substantially similar to them, such that an average listener could reasonably mistake the sounds for an actual EAS code or Attention Signal. *Emergency Alert System: False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Public Notice, 28 FCC Rcd 15438, 15440 (EB 2013) (2013 EAS Enforcement Advisory). By contrast, general

(continued...)

has warned that the use of simulated or actual EAS Tones for non-authorized purposes—such as commercial or entertainment purposes—can lead to “alert fatigue,” whereby the public becomes desensitized to the alerts, questioning or simply disregarding whether a particular alert is intended to warn about a real, imminent threat or some other cause.⁵ Moreover, because the EAS codes include operative data elements,⁶ the misuse of simulated or actual EAS codes may result in false activations of the EAS that can spread false information or lock out legitimate activations of the EAS. Unauthorized use of the EAS Tones thus undermines the integrity and effectiveness of the EAS and presents a substantial threat to public safety.

4. In this Notice of Apparent Liability for Forfeiture, we find that ESPN apparently willfully and repeatedly violated section 11.45(a) of the Commission’s rules⁷ on October 20, 2023, October 23, 2023, and October 24, 2023, when it transmitted or caused the transmission of EAS codes during a Promo Spot in the absence of any actual emergency, authorized test of the EAS, qualified PSA, or other Permitted Uses.⁸ The prohibition on such transmissions has been in place for many years, and the Commission has repeatedly made its requirements clear.⁹ Accordingly, based on our review of the facts

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alarms or other loud noises, including bells and police or fire sirens, are not considered “simulations” of the EAS tones and are not prohibited under section 11.45 of the Commission’s rules. *Id.*

⁴ Permitted uses of the EAS are limited to alerts of actual emergencies, authorized tests of the EAS, qualified PSAs, or as otherwise specified in sections 10.520(d), 11.46, and 11.61 of the Commission’s rules (collectively, Permitted Uses). See 47 CFR § 11.45(a).

⁵ See, e.g., *Fox NAL*, at *1, para. 3; *CBS NAL*, 34 FCC Rcd at 8418, para. 2; *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Wireless Emergency Alerts*, PS Docket Nos. 15-94, 15-91, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086, 7091-92, para. 9 (2018); *2013 EAS Enforcement Advisory*, at 15438.

⁶ See 47 CFR § 11.31(a). The EAS uses a four-part message for an emergency activation, consisting of: Preamble and EAS Header Codes; audio Attention Signal; message; and Preamble and EAS End of Message (EOM) Codes. *Id.* The sounds of an EAS message serve the dual purposes of capturing a listener’s or viewer’s attention and conveying specially coded information for equipment that is activated by the EAS message as part of an actual emergency or authorized test. See *Viacom, Inc., NBC Universal Media, LLC, ESPN Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2548, 2548, para. 1 (2014) (*Viacom/ESPN NAL*), *aff’d*, *Viacom, Inc., ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797 (2015) (forfeiture paid) (*Viacom/ESPN FO*). The EAS codes consist of audible sounds in which encoded information regarding the specific alert is embedded. See *Viacom/ESPN NAL*, 29 FCC Rcd at 2548, para. 1. The separate EAS Attention Signal that follows the EAS codes includes two tones that are transmitted simultaneously. *Id.*

⁷ See 47 CFR § 11.45(a).

⁸ See Response to Letter of Inquiry, from Matthew S. DelNero and Jorge Ortiz, Covington & Burling LLP, counsel to ESPN, Inc., to Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 2-4, Responses to Questions 3-6 (Feb. 9, 2024, as supplemented Feb. 21, 2024) (on file in EB-IHD-23-00035802) (LOI Response). This Notice of Apparent Liability for Forfeiture does not disclose material identified as confidential in the LOI Response, and we defer ruling on the Confidentiality Request unless and until necessary. See 47 CFR § 0.459(d)(3) (the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to 47 CFR § 0.460 or 47 CFR § 0.461; such material will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted).

⁹ See generally *False, Fraudulent, or Unauthorized Use of the Emergency Alert System or Wireless Emergency Alert Codes or Attention Signals is Strictly Prohibited*, Public Notice, 34 FCC Rcd 7041 (EB 2019) (Enforcement Advisory promoting understanding of the regulations governing the appropriate use of EAS Tones); *Viacom/ESPN FO*, 30 FCC Rcd at 797, paras. 1-2 (affirming findings that Viacom and ESPN committed violations of the Commission’s rules by transmitting or causing transmission of EAS Tones in a promotional announcement for the movie, “Olympus Has Fallen,” on cable networks); *2013 EAS Enforcement Advisory*, *supra* note 3, at 15438 (promoting understanding of the laws governing appropriate use of EAS Tones to address concerns about misuse of EAS Tones aired in order to capture audience attention when there is no actual emergency or test). See also

(continued...)

and circumstances surrounding these apparent violations of section 11.45(a) of the Commission's rules, we propose a forfeiture of \$146,976 against ESPN.

II. BACKGROUND

A. Legal Framework

5. Pursuant to section 503(b)(1) of the Communications Act of 1934, as amended (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.¹⁰ 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” the law.¹¹ 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,¹² and the Commission has so interpreted the term in the section 503(b) context.¹³ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.¹⁴ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.¹⁵

6. Under section 11.45(a) of the Commission's rules, “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in [sections] 10.520(d), 11.46, and 11.61 of this chapter.”¹⁶ The Commission adopted section

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Enforcement Bureau Reminds Emergency Alert System (EAS) Participants of Compliance Obligations, Public Notice, 36 FCC Rcd 44, 47 (EB 2021) (reiterating that failure to comply with the EAS rules may subject a violator to sanctions, including monetary forfeitures).

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

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., [s]ection 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in [s]ections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹³ *See, e.g., 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 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

¹⁵ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

¹⁶ 47 CFR § 11.45(a). Section 11.46 of the Commission's rules provides that “EAS Participants may use the EAS Attention Signal and a simulation of the EAS codes as provided by FEMA in EAS Public Service Announcements (PSAs) (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, or non-governmental organizations, to raise public awareness about emergency alerting.” *Id.* § 11.46. Section 11.61 of the Commission's rules provides that “EAS Participants shall conduct tests [of EAS procedures] at regular intervals” *Id.* § 11.61(a). *See also Viacom/ESPN FO*, *supra* note 6, at 799-800, para. 8 (explaining that section 11.45 of the Commission's rules “applies broadly to ‘persons’ and does not exclude cable programmers. Likewise, it explicitly applies to actions that ‘transmit or cause to transmit’ the restricted EAS Tones, and is not limited to direct transmissions by or to a particular person or entity.”).

11.45 in 1994 to protect the integrity and operation of the EAS,¹⁷ acknowledging that while existing laws prohibited false distress signals and broadcast hoaxes, “a specific prohibition against the misuse of the EAS attention signal and codes is necessary . . . because it is more specific and directly addresses the proper use of EAS codes and Tones.”¹⁸

B. Factual Background

7. ESPN, based in Bristol, Connecticut, is a multimedia sports entertainment company that nationally distributes television programming.¹⁹ ESPN Holding Company, Inc., an indirect subsidiary of The Walt Disney Company, owns 80% of ESPN, and Hearst Brazil, Inc., a subsidiary of The Hearst Corporation, owns the remaining 20%.²⁰ The Promo Spot is a promotional segment concerning the start of the 2023-24 NBA season.²¹ ESPN included the Promo Spot on its nationally distributed cable networks, the ESPN network (ESPN Network), and its companion network, ESPN 2, which are widely carried by cable systems and other multichannel video programming distribution systems (MVPDs) throughout the United States.²²

8. On October 20, 2023, the Commission received complaints alleging that ESPN transmitted the EAS Tones, or a simulation thereof, multiple times, including on October 20, 2023, during a sports-related promotion.²³ The Enforcement Bureau’s Investigations and Hearings Division issued a letter of inquiry (LOI) on January 10, 2024, directing ESPN to submit, among other things, recordings of the complained-of programming and sworn written statements as to whether it had transmitted, or caused the transmission of, the EAS Tones.²⁴ ESPN provided a video recording of the October 20, 2023, October 23, 2023, and October 24, 2023 airings of the Promo Spot.²⁵

¹⁷ See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91–301 and 91–171, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6903, 6907, para. 39 (1992).

¹⁸ *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91–301 and 91–171, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1815, para. 84 (1994). In enforcing section 11.45 of the Commission’s rules, the Commission explained:

The plain language of the rule prohibits *any* transmission of the EAS Tones in the absence of an actual emergency or authorized test . . . Moreover, [s]ection 11.45 contains no provision limiting liability under the rule to cases where intent to deceive exists, nor does the rule make exceptions for, or protect, ‘dramatic’ uses of the EAS Tones. Instead, the rule provides that the transmission of the EAS Tones is prohibited in ‘any circumstance’ except when an actual emergency or authorized test warrants their use.

Viacom/ESPN FO, *supra* note 6, at 801-02, para. 12.

¹⁹ LOI Response, *supra* note 8, at 1, Response to Question 1. ESPN also holds Commission-issued wireless and satellite authorizations. See *id.* at 1, Response to Question 2, Exh. A – List of FCC Registration Numbers (“FRNs”) and FCC Authorizations.

²⁰ *Id.* at 1, Response to Question 1.

²¹ *Id.* at 2, Response to Question 3(a).

²² *Id.* at 2, Responses to Questions 3(b)-(c).

²³ See Complaint No. 6531140 (Oct. 20, 2023) (on file in EB-IHD-23-00035802); Complaint No. 6531910 (Oct. 20, 2023) (on file in EB-IHD-23-00035802) (together Complaints).

²⁴ See Letter of Inquiry from Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to James Pitaro, Chairman, ESPN, The Walt Disney Company, Nell DeVane, Chief Counsel, ESPN, and Susan Fox, Senior Vice President, The Walt Disney Company (Jan. 10, 2024) (on file in EB-IHD-23-00035802) (LOI).

²⁵ See LOI Response, *supra* note 8, at 1. See also *id.* at Exh. B - Transcript of Programming (Promo Spot).

9. In its LOI Response, ESPN admits that it developed, produced, and transmitted the subject programming.²⁶ ESPN further admits that “[f]or each Transmission, ESPN Transmitted or caused to be Transmitted a portion of the EAS Attention Signals as part of the Promo Spot.”²⁷ ESPN notes that the Promo Spot was “accompanied by a brief, less than two second excerpt of the EAS Attention Signals, immediately followed by a . . . voiceover of a man who states, in an exaggerated, stentorian tone, that ‘we interrupt our program to bring you this important message.’”²⁸ ESPN believes that “the brief portion of the EAS Attention Signals included in the Promo Spot [was] an excerpt of the EAS header tone” and did “not include other elements of the EAS Attention Signals, such as the dual-tone attention signal.”²⁹ ESPN further admits that for the Promo Spot airings, ESPN did not transmit or cause to be transmitted a portion of the EAS Tones in connection with any Permitted Use, *i.e.*, an actual emergency, authorized test of the EAS, or qualified PSA.³⁰ ESPN acknowledges that it transmitted the Promo Spot a total of six times during October 20-24, 2023, on two ESPN-owned networks.³¹

10. ESPN admits that ESPN producers “likely . . . obtained the portion of the EAS Attention Signal recordings from a publicly available YouTube video,”³² and that its producers, and potentially other ESPN production staff, reviewed the Promo Spot before its initial transmission in 2023.³³ ESPN indicates that it was aware that the Promo Spot was transmitted to the public at approximately the time it was transmitted.³⁴ After the initial airings, ESPN believes that “some members of the production team may have discussed the presence of the excerpt of the EAS Attention Signals in the Promo Spot, but they apparently did not comprehend that its use was prohibited.”³⁵ ESPN notes that it “is taking this opportunity to revisit its internal review processes and reeducate its personnel” regarding the FCC’s EAS rules.³⁶

III. DISCUSSION

11. We find that ESPN apparently willfully and repeatedly violated section 11.45(a) of the Commission’s rules. ESPN confirms that the six airings of the Promo Spot, twice each day on October

²⁶ See, *e.g.*, *id.* at 1, Response to Question 2 n.3.

²⁷ *Id.* at 3, Response to Question 4. Throughout the LOI Response, ESPN refers to its transmission of “EAS Attention Signals” with respect to its transmissions of the Promo Spot. We find those transmissions to be EAS codes, not an EAS Attention Signal as defined in 47 CFR § 11.31.

²⁸ *Id.* at 4, Response to Question 6. See *supra* note 27.

²⁹ *Id.* at 4, Response to Question 7. See *supra* note 27.

³⁰ See *id.* at 3-4, Responses to Questions 5, 5(a), 5(c). ESPN has no knowledge that any emergency response was made by federal, state, or local law enforcement or other public health and safety authorities concomitant with or as a result of its transmissions, and whether such transmissions triggered any other EAS alert notifications to issue. *Id.* at 4, Response to Question 5(b). According to ESPN, it would have been “highly unlikely.” *Id.* ESPN notes that EAS hardware “does not process incomplete EAS tones of such short duration” and “the excerpt was sourced from what appears to be an analog-era simulation or recording of the retired Emergency Broadcast System (EBS) alerting tone.” *Id.*

³¹ Specifically, ESPN transmitted the Promo Spot two times on October 20, 2023 on the ESPN Network, one time on October 23, 2023 on the ESPN Network, one time on October 23, 2023 on ESPN 2, and two times on October 24, 2023 on ESPN 2. *Id.* at 2, Response to Question 3(b). The Promo Spot was also posted to an ESPN YouTube Account and a personal LinkedIn account. See *id.* at 8, Response to Question 14.

³² *Id.* at 5, Response to Question 9(a). See *supra* note 27.

³³ *Id.* at 6, Response to Question 9(c).

³⁴ *Id.* at 5, Response to Question 8(a).

³⁵ *Id.* at 8, Response to Question 13. See *supra* note 27.

³⁶ See *id.* at 8, Responses to Question 13, 15.

20, 2023, October 23, 2023, and October 24, 2023, included a portion of the EAS Tones.³⁷ ESPN admits that it and its employees or agents created and transmitted the Promo Spot with a portion of the EAS Tones, and that the Promo Spot was aired on its owned networks which are widely carried by cable systems and other MVPDs nationwide.³⁸ We find ESPN responsible for transmitting the Promo Spot with the EAS codes a total of six times on its networks. ESPN also admits that none of the material in question was transmitted in connection with an actual national, state, or local emergency, authorized test, or qualified PSA.³⁹ Accordingly, we find six apparent violations of section 11.45(a) of the Commission's rules by ESPN.

12. Despite being shorter in duration than the full EAS Tones,⁴⁰ the approximate two-second portion of the EAS Tones used in the Promo Spot were recognizable by viewers or listeners as substantially similar to the EAS Tones.⁴¹ The Promo Spot's voiceover "in an exaggerated, stentorian tone,"⁴² also did not alter or neutralize its overall effect of falsely warning listeners and viewers of a non-existent emergency, as the portion of the EAS Tones was clearly audible, cognizable, and appropriated for a non-emergency use.⁴³ This manner of appropriation of the EAS Tones falls squarely within the type of simulation that the Commission's rules seek to address and prohibit in order to avoid diluting the EAS Tones' real meaning over time.⁴⁴

³⁷ See *id.* at 2-4, Responses to Questions 3(b), at 3-4, 6-7. Throughout the LOI Response, ESPN refers to its transmission of "EAS Attention Signals" with respect to its transmissions of the Promo Spot. We find those transmissions to be EAS codes, not an EAS Attention Signal. Section 11.45(a) of the Commission's rules applies to "...the EAS codes or Attention Signal, or a recording or simulation thereof..." 47 CFR § 11.45(a). As such, improper transmission of the EAS codes or Attention Signal may violate section 11.45(a) of the Commission's rules.

³⁸ See *id.* at 1-3, 6, Responses to Questions 2, n.3, 3, 3(b)-(d), 4, 9(d). See *supra* note 37. ESPN holds Commission-issued wireless and satellite authorizations. See *id.* at 1, Response to Question 2, Exh. A – List of FCC Registration Numbers ("FRNs") and FCC Authorizations. As a Commission regulatee, ESPN is responsible for the acts of its employees and agents. See, e.g., *Eure Family Ltd. P'ship*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002) ("[L]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors.").

³⁹ LOI Response, *supra* note 8, at 3-4, Responses to Questions 5, 5(a), 5(c).

⁴⁰ See *id.* at 4, Response to Question 6.

⁴¹ See Complaints, *supra* note 23 (one Complaint stating that ESPN aired promo spot that "included a simulated EAS alert tone followed by a fake emergency notice" and another Complaint stating that commercial on ESPN "is using part of the EAS sound"). See also *Fox NAL*, *supra* note 2, at *2, para. 4, *3, para. 9, *4, para. 12 (finding that FOX apparently willfully violated section 11.45(a) of the Commission's rules when it transmitted or caused the transmission of EAS tones – an approximately three-second excerpt of the EAS Attention Signal – during a FOX NFL promotional segment in the absence of any actual emergency, authorized test of the EAS, qualified PSA, or other Permitted Uses); *CBS NAL*, *supra* note 2, at 8424, para. 17 (finding that CBS improperly used a "modified" version of the EAS codes and Attention Signal that, despite being softer in volume and shorter in duration at approximately three seconds, nonetheless possessed the same characteristics as the actual EAS tones, and was recognizable by viewers or listeners as substantially similar to the EAS tones); *ESPN, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 12382, 12386-87, paras. 10-12 (EB 2021) (finding that ESPN apparently willfully violated section 11.45 of the Commission's rules when it transmitted programming including a portion of the EAS tones lasting a total of 1.83 seconds in the absence of Permitted Uses) (forfeiture paid) (*ESPN NAL*).

⁴² LOI Response, *supra* note 8, at 4, Response to Question 6.

⁴³ See *Fox NAL*, *supra* note 2, at *4, para. 12; *CBS NAL*, *supra* note 2, at 8425-26, paras. 19-21.

⁴⁴ See *Fox NAL*, *supra* note 2, at *4, para. 12 (finding manner of appropriation of the approximate three-second EAS tone used in the promotional segment is exactly the type of simulation that the Commission's rules seek to address and prohibit in order to avoid diluting the EAS tones' real meaning over time); *CBS NAL*, *supra* note 2, at 8425-26, paras. 19-22 (concluding that the sounds – including the shortened approximate three second Attention Signal – that

(continued...)

IV. PROPOSED FORFEITURE

13. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission”⁴⁵ Section 503(b)(2)(D) of the Act and section 1.80(b)(10) of the Commission’s rules authorize us to assess a forfeiture against ESPN as a Commission regulatee⁴⁶ of up to \$24,496 per violation or for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$183,718 for a single act or failure to act.⁴⁷ 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.⁴⁸ The Commission has established forfeiture guidelines, base penalties for certain violations, and has identified criteria that it considers when determining the appropriate penalty in any given case.⁴⁹ Under these guidelines, we may adjust a forfeiture downward for violations that are minor, good faith or voluntary disclosure of violations, where there is a history of compliance, or where there is an inability to pay.⁵⁰ We may adjust a forfeiture upward for violations that are egregious, intentional, repeated, that cause substantial harm or generate substantial economic gain for the violator, where there is an ability to pay, or where there is a history of prior violations of FCC requirements.⁵¹

14. Section 1.80(b) of the Commission’s rules provides for a base forfeiture of \$8,000 for various EAS and false distress rule violations, for each violation or each day of a continuing violation.⁵² The Commission has previously applied an \$8,000 base forfeiture for violations of section 11.45(a) of the Commission’s rules.⁵³ We have discretion, however, to depart from the base forfeiture guidelines, taking into account the particular facts of each individual case.⁵⁴ In determining the proposed forfeiture amount, we considered the factors outlined in section 503 of the Act, section 1.80 of the Commission’s rules, and

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CBS used in *Young Sheldon* simulated the actual EAS tones – exactly the type of simulation that the Commission’s rules seek to address).

⁴⁵ 47 U.S.C. § 503(b)(1)(B).

⁴⁶ ESPN holds Commission-issued wireless and satellite authorizations. See LOI Response, *supra* note 8, at 1, Response to Question 2, Exh. A – List of FCC Registration Numbers (“FRNs”) and FCC Authorizations.

⁴⁷ 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10) (setting the current inflation adjusted statutory maximum forfeiture penalty for a violation under 47 U.S.C. § 503(b)(2)(D) at \$24,496 per violation or for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$183,718 for a single act or failure to act). See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *6 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148, 2148 (Jan. 12, 2024) (setting January 15, 2024 as the effective date for the increases).

⁴⁸ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11).

⁴⁹ 47 CFR § 1.80(b)(11), Table 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* § 1.80(b)(11), Table 1.

⁵³ See, e.g., *CBS NAL*, *supra* note 2, at 8431, para. 36.

⁵⁴ *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*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

the Commission's *Forfeiture Policy Statement*. We have considered the number of transmissions at issue, ESPN's sizeable nationwide audience reach, the gravity of the apparent violations, the violator's degree of culpability, ability to pay, and the serious public safety implications of the apparent violations, as well as the other factors outlined in section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement*.

15. The nature of EAS violations requires particularly serious consideration because, among other issues, such violations undermine the integrity of the EAS by desensitizing the public to the potential importance of warning tones. EAS violations therefore implicate substantial public safety concerns. As explained in the *Fox NAL*, our forfeiture determination in such cases is based on multiple factors associated with the nature of the violation and the violator.⁵⁵ When applying the statutory factors concerning the circumstances, extent, and gravity of an EAS violation, we take into account a number of specific factors, including: (1) the number of repetitions (i.e., the number of individual transmissions); (2) the duration of the violation (i.e., the number of days or months over which the violation occurred); (3) the audience reach of the transmissions (e.g., nationwide, regional, or local); and (4) the extent of the public safety impact (e.g., whether an EAS activation is triggered).⁵⁶ While each of these factors may be significant in a given case, no single factor (e.g., the number of transmissions) is controlling.

16. In this case, we find ESPN responsible for transmitting the EAS codes during the Promo Spot over two of its networks a total of six times, resulting in a base forfeiture of \$48,000. Furthermore, reviewing the factors in this case, we find that an upward adjustment is warranted. As detailed above, ESPN apparently committed multiple violations over three days on its networks—the ESPN Network and ESPN 2—both of which are distributed to most cable systems and other MVPDs in the United States.⁵⁷ More than 55 million subscribers to cable systems and other MVPDs have access to the ESPN Network and ESPN 2 via their respective cable system or other MVPD provider.⁵⁸ The fact that ESPN's programming reached such potentially vast audiences greatly increases the extent and gravity of the instant repeated apparent violations. Moreover, the creation and transmissions of the Promo Spot involved a self-promotion by ESPN for its upcoming 2023-24 NBA season programming, which began on October 25, 2023,⁵⁹ shortly after the Promo Spot aired.⁶⁰ According to ESPN, the Promo Spot is known as the "NBA Is Back Tease,"⁶¹ a promotional segment (commonly known as a "promo tease" in

⁵⁵ See *Fox NAL*, *supra* note 2, at *5, para. 15.

⁵⁶ See *id.*

⁵⁷ LOI Response, *supra* note 8, at 2, Response to Question 3(c).

⁵⁸ *Id.* (referring to approximately 55.6 million subscribers). This figure represents the approximate number of Nielsen-estimated subscribers that have access to the ESPN network and ESPN 2 through cable systems and other MVPDs. *Id.* at 2, Response to Question 3(c), n.4. ESPN's parent company The Walt Disney Company stated in a recent annual report that ESPN has approximately 71 million subscribers, as estimated by Nielsen Media Research as of September 2023. The Walt Disney Company, Annual Report at 10 (Form 10-K) (Nov. 21, 2023), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1744489/000174448923000216/dis-20230930.htm> (last visited June 28, 2024) (Walt Disney 2023 Annual Report). The approximate 71 million subscriber estimate includes "traditional" multichannel video programming distribution systems and the majority of digital "OTT" subscriber counts. Walt Disney 2023 Annual Report at 10. "OTT" is a digital over-the-top (OTT) service that includes live linear streams of cable networks and the major broadcast networks. Walt Disney 2023 Annual Report at 3.

⁵⁹ See LOI Response, *supra* note 8, at 1, Exh. B - Transcript of Programming (Promo Spot), Ronce Rajan, ESPN & ABC's Blockbuster Broadcast Schedule for 2023-24 NBA Regular Season (Aug. 17, 2023), <https://espnpressroom.com/us/press-releases/2023/08/espn-abcs-blockbuster-broadcast-schedule-for-2023-24-nba-regular-season/>.

⁶⁰ See LOI Response, *supra* note 8, at 2, Response to Question 3(b) (stating that the Promo Spot aired on Oct. 20, 2023, Oct. 23, 2023, and Oct. 24, 2023).

⁶¹ *Id.* at 2, Response to Question 3.

the media sector) concerning the start of the 2023-24 NBA season⁶² that appeared in or adjacent to programs “First Take,” “NBA Today,” and “Sports Center.”⁶³ We find that this self-promotion for the purposes of additional economic gain⁶⁴ at the expense of the integrity of the EAS constitutes egregious misconduct warranting an upward adjustment.

17. In calculating the appropriate forfeiture, we also consider ESPN’s past compliance record. ESPN has a history of noncompliance with respect to section 11.45 of the Commission’s rules. In 2015, ESPN paid a \$280,000 forfeiture for violations of section 325(a) of the Act and section 11.45 of the Commission’s rules when it transmitted EAS Tones in the absence of a Permitted Use.⁶⁵ Once again in 2021, ESPN paid a \$20,000 forfeiture for violation of section 11.45 of the Commission’s rules when it transmitted EAS Tones in the absence of a Permitted Use.⁶⁶ We find ESPN’s prior history of EAS violations to be a significant factor to consider in determining the proposed forfeiture in this case.⁶⁷

18. Under section 503(b)(2)(E) of the Act, and as codified in section 1.80(b)(11) of our rules, we must take into account a target’s ability to pay a forfeiture.⁶⁸ With respect to ESPN’s ability to pay, The Walt Disney Company reported a substantial total revenue of \$22.1 billion, including ESPN’s approximate \$3.8 billion in domestic revenue, for a recent quarter.⁶⁹ ESPN clearly has an ability to pay.

⁶² *Id.* at 2, Response to Question 3(a).

⁶³ *Id.* at 2, Response to Question 3(b).

⁶⁴ The Walt Disney Company reported a total quarterly revenue of \$23.5 billion for October 1 - December 30, 2023, including domestic ESPN’s approximate \$4 billion in revenue, which encompassed the dates this Promo Spot aired. *See, e.g.,* Business Wire, *The Walt Disney Company Reports First Quarter Earnings for Fiscal 2024* (Feb. 7, 2024), <https://www.businesswire.com/news/home/20240207673292/en/The-Walt-Disney-Company-Reports-First-Quarter-Earnings-for-Fiscal-2024>. *See also* Michael McCarthy, *ESPN’s Financial Success Raises Questions About Cost-Cutting and Layoffs* (Nov. 13, 2023), <https://frontofficesports.com/espns-financial-success-raises-questions-about-cost-cutting-and-layoffs/>.

⁶⁵ *See Viacom/ESPN FO, supra* note 6, at 797, paras. 1-2 (affirming \$280,000 forfeiture against ESPN, Inc. for violations of the laws that prohibit misuse of tones reserved for the EAS).

⁶⁶ *See ESPN NAL, supra* note 43, at 12382-83, paras. 1-4 (finding that ESPN, Inc. apparently willfully violated section 11.45 of the Commission’s rules when it transmitted or caused the transmission of EAS Tones in the program “30 for 30: Roll Tide/War Eagle,” which was included in ESPN, Inc.’s programming stream sent to cable systems and other MVPDs in the absence of a Permitted Use).

⁶⁷ *See, e.g., Turner Broad. System, Inc., Notice of Apparent Liability for Forfeiture*, 29 FCC Rcd 752, 758, para. 16 (2014) (finding a higher degree of culpability due to a previous experience with misusing the EAS Tones) (forfeiture paid).

⁶⁸ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11); *see Forfeiture Policy Statement, supra* note 54, at 17099-17100, paras. 23-24 (cautioning all entities and individuals that the Commission will take into account the violator’s ability to pay in determining a forfeiture to guarantee that large or highly profitable entities do not consider forfeitures merely an affordable cost of doing business, and noting that such entities should expect proposed forfeitures against them to be well above the applicable base amount); *ASUSTeK Computer Inc., Notice of Apparent Liability for Forfeiture*, FCC 24-69, 2024 WL 3054117 at *7, para. 25 (June 14, 2024) (explaining that the significant upward adjustment for ability to pay “is warranted to ensure that the proposed forfeiture is an effective deterrent and not simply internalized by [the company] as a cost of doing business”) (forfeiture paid); *Viacom/ESPN FO, supra* note 6, at 806, para. 22 (noting that an upward adjustment is appropriate in light of Viacom’s reported annual revenues and the revenues of ESPN’s parent); *SBC Communications, Inc., Order on Review*, 17 FCC Rcd 4043, 4052, para. 20 (2002) (“[A] large and highly profitable company . . . should expect . . . that the forfeiture amount” may “be above, or even well above, the relevant base amount”).

⁶⁹ The Walt Disney Company reported a total quarterly revenue of \$22.1 billion for January 1 - March 30, 2024, including domestic ESPN’s approximate \$3.8 billion in revenue. *See, e.g.,* Business Wire, *The Walt Disney Company Reports Second Quarter and Six Months Earnings for Fiscal 2024* (May 7, 2024),

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A significant upward adjustment of the base forfeiture amount is warranted to ensure that the proposed forfeiture is an effective deterrent and not simply internalized by ESPN as a cost of doing business.⁷⁰

19. Given the totality of the circumstances, and consistent with the statutory factors, section 1.80 of the Commission's rules, and the Commission's *Forfeiture Policy Statement*, we conclude that a proposed forfeiture of \$146,976, the applicable statutory maximum amount for six apparent violations,⁷¹ is appropriate in this case for ESPN's apparent egregious repeated violations of section 11.45(a) of the Commission's rules.

20. We find no basis for a downward adjustment.⁷² First, this was not a minor violation. ESPN had clear and unambiguous notice of the requirements and applicability of the EAS rules to its advertising programming.⁷³ ESPN's advertising guidelines clearly prohibited the use of EAS Tones, or simulation thereof, in advertisements "[u]nder no circumstances."⁷⁴ ESPN touts that such policy was purportedly "generally...made known to employees of ESPN and to others, including...members of ESPN's production teams."⁷⁵ However, ESPN admits that ESPN producers and potentially other ESPN production staff reviewed the Promo Spot before its initial transmission,⁷⁶ and "some members of the production team may have discussed the presence of the excerpt of the EAS Attention Signals in the Promo Spot, but they apparently did not comprehend that its use was prohibited."⁷⁷

21. Second, this case did not involve voluntary disclosure or good faith compliance efforts before the LOI was issued in this case. Even though ESPN was aware that the Promo Spot was transmitted to the public at approximately the time it was transmitted,⁷⁸ ESPN did not disclose it to the Commission until required to do so in its LOI Response.⁷⁹ Thus the disclosure in the LOI Response does not constitute the type of good faith disclosure that warrants a reduction to the proposed forfeiture amount.⁸⁰ Additionally, while ESPN may have taken corrective action to stop transmitting the Promo

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<https://www.businesswire.com/news/home/20240507742924/en/The-Walt-Disney-Company-Reports-Second-Quarter-and-Six-Months-Earnings-for-Fiscal-2024>.

⁷⁰ See, e.g., *Forfeiture Policy Statement*, *supra* note 54, at 17098, para. 20 (1997) (recognizing the relevance of creating the appropriate deterrent effect in choosing a forfeiture); see also 47 CFR § 1.80(b)(11), Table to paragraph (b)(11) (identifying adjustment criteria for section 503 forfeitures).

⁷¹ \$146,976 equals \$24,496, the current applicable statutory maximum forfeiture penalty, multiplied by six for each apparent violation. See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10) (setting the current inflation adjusted statutory maximum forfeiture penalty for a violation under 47 U.S.C. § 503(b)(2)(D) at \$24,496 per violation or for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$183,718 for a single act or failure to act). See also *supra* note 49.

⁷² 47 CFR § 1.80(b)(11), Table 3 (downward adjustment factors include minor violations, good faith or voluntary disclosure, history of overall compliance, and inability to pay).

⁷³ See, e.g., *Viacom/ESPN NAL*, *supra* note 6, at 2558-59, para. 23; *Viacom/ESPN FO*, *supra* note 6, at 797, paras. 1-2 (affirming findings that Viacom and ESPN, Inc. committed violations of the Commission's rules by transmitting or causing transmission of EAS Tones in a promotional announcement for the movie, "Olympus Has Fallen," on cable networks).

⁷⁴ LOI Response, *supra* note 8, at Exh. C – Policy Documents on Improper Use of EAS Tones, ESPN Advertising Standards & Guidelines (2019).

⁷⁵ *Id.* at 7, Response to Question 11(b).

⁷⁶ *Id.* at 6, Response to Question 9(c).

⁷⁷ *Id.* at 8, Response to Question 13. See *supra* note 27.

⁷⁸ *Id.* at 5, Response to Question 8(a).

⁷⁹ See LOI, *supra* note 24, at 1-2 (directing ESPN, Inc. and The Walt Disney Company to provide the information requested therein concerning the Complaints).

Spot on October 24, 2023,⁸¹ corrective action taken in compliance with Commission rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸² ESPN explained in its LOI Response that it “is taking this opportunity to revisit its internal review processes and reeducate its personnel regarding” the FCC’s EAS rules.⁸³ Those compliance efforts to revisit its processes and reeducate its personnel apparently occurred only after the LOI and do not justify a reduction to the proposed forfeiture amount.⁸⁴

22. Third, as described above in paragraph 18, ESPN has been the subject of previous enforcement actions involving EAS violations.⁸⁵ We therefore find no countervailing downward adjustment to be appropriate based on compliance history.⁸⁶

23. Therefore, after applying the statutory factors, section 1.80 of the Commission’s rules, and the Commission’s *Forfeiture Policy Statement*, we find ESPN apparently liable for a total forfeiture of \$146,976.

V. CONCLUSION

24. In view of the foregoing, we determine that ESPN apparently willfully and repeatedly violated section 11.45(a) of the Commission’s rules, 47 CFR § 11.45(a), and propose a total forfeiture of \$146,976.

VI. ORDERING CLAUSES

25. 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, ESPN, Inc. is hereby **NOTIFIED** of

(Continued from previous page...)

⁸⁰ See, e.g., *Fox NAL*, *supra* note 2, at *6, para. 20 (finding that required notification to the FCC under section 11.45(b) of the Commission’s rules does not constitute the type of good faith disclosure that warrants a reduction to the proposed forfeiture amount).

⁸¹ See LOI Response, *supra* note 8, at 2, Response to Question 3(b).

⁸² See, e.g., *Viacom/ESPN FO*, *supra* note 6, at 806, para. 23 (declaring that “...it is well settled precedent that subsequent remedial actions do not excuse or nullify a licensee’s violation of a Commission rule.”); *Radio License Holding XI, LLC*, Forfeiture Order, 29 FCC Rcd 1623,1629-30, para. 15 (2014) (declining to reduce a per-broadcast forfeiture even when the licensee took certain corrective action prior to receiving the Bureau’s letter of inquiry, but did not also notify listeners of the violative announcements and did not voluntarily disclose its conduct to the Commission); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken ... does not excuse the prior violations.”).

⁸³ LOI Response, *supra* note 8, at 8, Response to Question 13. On January 25, 2024, ESPN’s counsel circulated to ESPN personnel a reminder notice that the improper use of EAS Tones in ESPN content was strictly prohibited. See *id.* at Exh. C – Policy Documents on Improper Use of EAS Tones.

⁸⁴ Cf. *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965, para. 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003) (reducing a forfeiture from \$9,200 to \$8,000 for EAS violations because the licensee had identified the problems and had ordered replacement equipment prior to the Field Office’s on-site inspection).

⁸⁵ See LOI Response, *supra* note 8, at 10, Response to Question 18. See *Viacom/ESPN FO*, *supra* note 6, at 797, paras. 1-2 (affirming \$280,000 forfeiture against ESPN, Inc. for violations of the laws that prohibit misuse of tones reserved for the EAS); *ESPN NAL*, *supra* note 43, at 12382-83, paras. 1-4 (finding that ESPN, Inc. apparently willfully violated section 11.45 of the Commission’s rules when it transmitted or caused the transmission of EAS Tones in the program “30 for 30: Roll Tide/War Eagle,” which was included in ESPN, Inc.’s programming stream sent to cable systems and other MVPDs in the absence of a Permitted Use).

⁸⁶ See 47 CFR § 1.80(b)(11), Table 3. See, e.g., *Cumulus Radio LLC*; *Radio License Holding CBC, LLC*; *Cumulus Licensing LLC*; and *Radio License Holdings LLC*, Forfeiture Order, 36 FCC Rcd 738, 748, para. 27 (2021) (declining to reduce the forfeiture when licensee’s history of overall compliance includes past violations including violation of the exact same Commission rule at issue in this decision).

this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred and forty six thousand and nine hundred and seventy six dollars (\$146,976) for willful and repeated violations of section 11.45(a) of the Commission's rules, 47 CFR § 11.45(a).

26. **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, ESPN, 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 30 below.

27. In order for ESPN, Inc. to pay the proposed forfeiture, ESPN, Inc. shall notify the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at IHDMedia@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, ESPN, Inc. shall send electronic notification of payment to the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at IHDMedia@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁸⁷

- 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 159⁸⁸ or printed CORES form⁸⁹ 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).⁹⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username 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/core/userLogin.do>. To

⁸⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁸⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁸⁹ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

⁹⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

28. 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. *See* 47 CFR § 1.1914. 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.

29. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules. 47 CFR §§ 1.16, 1.80(g)(3). The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission at IHDMedia@fcc.gov.

30. 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. 47 U.S.C. § 503(b)(2)(E). 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.⁹¹

⁹¹ *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).

31. **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 Maria Kirby, Vice President, Government Relations, The Walt Disney Company, 425 Third Street, SW, Suite 1100, Washington D.C. 20024, to Thomas Carroll, Principal Counsel, ESPN, Inc., ESPN Plaza, Bristol, Connecticut 06010, and to ESPN, Inc.'s attorneys Matthew S. DelNero, Esq. and Jorge Ortiz, Esq., Covington & Burling LLP, One City Center, 850 Tenth Street, NW, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

In the Matter of	)	
	)	
Strengthening Customer Service in the	)	CG Docket No. 24-472
Communications Industry	)	

NOTICE OF INQUIRY

Adopted: October 10, 2024

Released: October 23, 2024

Comment Date: November 22, 2024

Reply Date: December 9, 2024

By the Commission: Commissioners Carr and Simington dissenting; Chairwoman Rosenworcel and Commissioners Carr, Starks and Gomez issuing separate statements.

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I. INTRODUCTION

1. Dealing with customer service should be easy. But all too often consumers of communications services cannot get help without navigating a complex maze of chatbots and other automated tools, experiencing delays that leave them exhausted and no closer to resolving their problem. Consumers can even be deterred from or delay switching services, which in turn harms the marketplace.

2. We thus initiate this inquiry on ways to ensure that consumers have appropriate access to the customer service resources they require to interact with their service provider in a manner that allows them to efficiently resolve issues, avoid unnecessary charges, and make informed choices regarding the

services they obtain from these service providers.¹ We inquire about initiatives that could not only take some of the pain out of routine customer service problems, but also advance consumer choice by making it easier to change providers when they are frustrated. Advances in technology have brought an abundance of customer service options that promote efficiency and cost savings, and we applaud those developments. At the same time, consumers deserve the ability to resolve problems quickly and easily, and in a way that suits their needs. Accordingly, we seek information on how to best balance those two goals.

II. BACKGROUND

A. FCC Customer Service Initiatives

3. *Cable Operator Services.* In the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Congress, in order to “provide increased consumer protection,” amended section 632 of the Act to grant the Commission authority to adopt customer service standards for cable operators.² In doing so, Congress mandated that the Commission establish baseline federal standards that state and local governments could adopt and enforce. The legislative history of the 1992 Cable Act explains that Congress considered cable operators’ customer service “an area of paramount concern,” and intended for the customer service provisions to guarantee a minimum level of consumer protection against poor customer service by those providers.³ The standards adopted by the Commission were designed to be enforced at the local level, primarily by franchise authorities.⁴ At the same time, the Commission noted, the Act permits state and local governments, including franchise authorities, to establish and enforce customer service requirements for cable operators that exceed the standards set by the Commission.⁵

4. Section 632(b) of the Act directs the Commission to “establish standards by which cable operators may fulfill their customer service requirements.”⁶ The legislative history of section 632 defines “customer service” as, in general, “the direct business relation between a cable operator and a

¹ Unless otherwise indicated herein, the term “service provider” will refer collectively to cable operators, Direct Broadcast Satellite providers, voice service providers, and broadband service providers.

² Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, § 8, 106 Stat. 1460 (1992); 47 U.S.C. § 552(b).

³ House Committee on Energy and Commerce, H.R. REP. 102-628, at 34-37, 105 (1992) (1992 Cable Act House Report); Senate Committee on Commerce, Science and Transportation, S. REP. 102-92, at 1, 3 (1992).

⁴ See *Implementation of Section 8 of the Cable Television Consumer Protection Act and Competition Act of 1992 Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2897, para. 19 (1993) (*Cable Operator Customer Service R&O*); see also 47 CFR § 76.309(a) (“A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.”).

⁵ *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2895, para. 10 (“Sections 632(a) and (c) preserve the ability of local governments to exceed the FCC standards through the franchising or regulatory process when additional obligations are deemed necessary.”); 47 U.S.C. § 552(a), 552(d)(2); see also 47 CFR § 76.309(b)(1)-(4) (“Nothing in this rule should be construed to prevent or prohibit: (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section; (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements; (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.”).

⁶ 47 U.S.C. § 552(b).

subscriber.”⁷ The statute requires that, at a minimum, the Commission set standards addressing: cable system office hours, telephone availability, installations, outages, service calls, and communications between the cable operator and subscriber, including billing and refunds.⁸ In 1993, the Commission implemented this mandate in section 76.309 of its rules, adopting a single set of customer service requirements for cable operators in the areas Congress specified.⁹ At that time, the Commission declined to adopt any additional standards in areas not specified in the statute.¹⁰ However, the Commission reserved the right to revise and supplement the standards “to ensure that customer service satisfaction is achieved nationwide.”¹¹

5. *Direct Broadcast Satellite (DBS) Provider Services.* With regard to DBS providers, section 303(v) of the Act grants the Commission “exclusive jurisdiction to regulate the provision of direct-to-home satellite services,”¹² and section 335(a) provides broad statutory authority to the Commission to impose “public interest or other requirements for providing video programming” on DBS providers.¹³ While the Commission has not adopted as many customer service obligations for DBS providers as it has for cable operators, the Act does afford the Commission this authority. For example, the Commission has recently adopted billing and marketing requirements for DBS providers relying, in part, on its section 335(a) authority.¹⁴ The Commission has also proposed using its section 335(a) authority to adopt rules prohibiting DBS providers from imposing early termination fees (ETFs) and

⁷ House Committee on Energy and Commerce, H.R. REP. 98-934, at 79 (1984) (1984 Cable Act House Report).

⁸ 47 U.S.C. § 552(b).

⁹ 47 CFR § 76.309(c)(1) (addressing cable system office hours and telephone availability), 76.309(c)(2) (addressing installations, outages, and service calls), 76.309(c)(3) (addressing communications between cable operators and cable subscribers); *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2901, para. 34 (“[W]e are adopting a single set of federal customer service standards which deal with the specific areas set out in section 632(b).”). Rather than tailor customer service standards based on the size of cable systems, the Commission found that the better approach would be to adopt standards flexible enough to apply to cable systems of varying sizes and to allow small cable systems to seek a waiver of the standards if they found that compliance with one or more of the standards would be too onerous. *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2895, para. 11.

¹⁰ *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2907, para. 69.

¹¹ *Id.* In 1999, the Commission revised and streamlined the customer notification requirements previously in section 76.309, along with other cable television notice requirements contained throughout Part 76 of the Commission’s rules, and consolidated them into a newly created Subpart T. *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, 14 FCC Rcd 4653, 4655-58, paras. 7-11 (1999). The customer notification requirements previously in section 76.309 can now be found in sections 76.1602, 76.1603, and 76.1619. 47 CFR § 76.1602 (notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers annually regarding service); 47 CFR § 76.1603 (subscriber notification requirements governing rate and service changes); 47 CFR § 76.1619 (notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes). We do not seek comment on these customer notification requirements in this proceeding.

¹² 47 U.S.C. § 303(v).

¹³ 47 U.S.C. § 335(a).

¹⁴ *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket No. 23-203, 2024 WL 1236499, at *17-18, para. 37-39 (2024) (*All-In Pricing R&O*) (concluding that the Commission can rely on section 335(a) authority to adopt billing and marketing requirements for DBS providers that serve the public interest). We note that in this order the Commission also relied in part on section 632 to adopt billing and marketing requirements for cable operators.

billing cycle fees (BCFs) on subscribers who cancel their service prior to the contract expiration date or the end of their billing period.¹⁵

6. *Telecommunications Services.* In 1999, the Commission adopted “truth-in-billing” requirements to address growing consumer confusion related to billing for telecommunications services and an increasing number of entities taking advantage of this confusion.¹⁶ In relevant part, these rules require telephone bills to contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about or to contest charges on the bill, including requiring common carriers to “prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill.”¹⁷ The truth-in-billing rules also prohibit carriers from placing on the bill “any telephone bill charges that have not been authorized by the subscriber.”¹⁸

7. In 2009, the Commission launched a broad inquiry exploring how it might protect and empower consumers to pick the best communications services and plans to fit their needs.¹⁹ The *Consumer Information NOI* sought comment on potential opportunities to protect and empower consumers by ensuring access to relevant information about communications services.²⁰ On the issue of customer service practices, the Commission sought comment on “whether customers are able effectively and in a timely manner to dispute charges on their bills with their service provider when they call the toll free number provided on the bill.”²¹

8. In response to that request, some commenters noted the difficulties faced by individuals with disabilities or communication barriers in gaining access to customer service information from their service provider.²² Several commenters suggested that disclosures of trial periods were inadequate and

¹⁵ *Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking, MB Docket No. 23-405, 2023 WL 8782362, at *5, para. 10 (2023) (*Cable and DBS Billing Practices NPRM*) (tentatively finding that imposing restrictions on early termination and billing cycle fees are in the public interest and tentatively concluding that the Commission may regulate such practices pursuant to its section 335(a) authority to impose public interest requirements on DBS providers and pursuant to its section 632 authority to establish customer service standards for cable operators).

¹⁶ *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 at 7493-94, para. 1 (1999) (*First Truth-in-Billing Order*) (“In this Order, we undertake common-sense steps to ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications marketplace, while at the same time protecting themselves from unscrupulous competitors”).

¹⁷ See 47 CFR § 64.2401(d).

¹⁸ *Id.* § 64.2401(g).

¹⁹ See *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, 24 FCC Rcd 11380 (2009) (*Consumer Information NOI*).

²⁰ *Id.* at 11387, para. 16.

²¹ *Id.* at 11397, para. 50 (seeking information on issues such as “[w]hat hours are call centers open to respond to customer inquiries and complaints? What is the process for consumers who are trying to cancel service, dispute a bill or change their service?”).

²² See, e.g., American Association of People with Disabilities Comments, CG Docket No. 09-158, at 7 (“[w]hile some service providers offer clear ways for consumers with disabilities to request information or dispute their bills, there are too many instances that we hear about of consumers with disabilities being given ‘the runaround’ or being ‘handed off’ when the initial contact should have and could have resolved the concern”) (filed Oct. 13, 2009); Telecom for the Deaf *et al.* Comments, CG Docket No. 09-158, at 2-3 (indicating that a deaf or hard of hearing individual who uses relay service to call a service provider may be frustrated more than others when trying to navigate through phone tree menus and interactive voice systems) (filed Oct. 13, 2009).

led to surprise price increases following the expiration of such trials periods.²³ In contrast, however, industry commenters argued that additional disclosures or customer service measures are unnecessary and burdensome due to the incentives of the competitive marketplace.²⁴

B. National Consumer Protection Week 2024 – Customer Service Practices

9. On March 1, 2024, the President issued a Proclamation declaring March 3, 2024 through March 9, 2024, “National Consumer Protection Week,” and called upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers to defend themselves from predatory acts.²⁵ As part of the Proclamation, the President noted that difficult cancellation processes for subscription services can lead to unwanted charges.²⁶

C. Federal Trade Commission – Negative Option Rule

10. On April 24, 2023, the Federal Trade Commission (FTC) sought comment on proposed amendments to the FTC’s Rule Concerning Subscriptions and Other Negative Option Plans that are designed to combat unfair or deceptive practices that include recurring charges for products or services consumers do not want and cannot cancel without undue difficulty.²⁷ The FTC indicates that negative option offers come in a variety of forms, but all share a central feature: each contain a term or condition that allows a seller to interpret a customer’s silence, or failure to take an affirmative action, as acceptance of an offer.²⁸

11. The FTC’s current rule covers prenotification plans – in which sellers send periodic notices offering goods to participating consumers and then send and charge for those goods only if consumers take no action to decline the offer – and it requires prenotification plan sellers to disclose their plan’s material terms clearly and conspicuously before consumers subscribe.²⁹ The FTC has sought comment on various proposals, including amendments to the existing rules to further address disclosures, consumer consent, and cancellation of service with respect to negative option plans.³⁰ Several commenters in that proceeding expressed particular problems with free trials or trial conversions. For example, according to the State AG commenters, advertisements often lure consumers by promising a

²³ See, e.g., Montgomery County Comments, CG Docket No. 09-158, at 1; Texas PUC, CG Docket No. 09-158, Comments at 10-11 (filed Oct. 13, 2009); Utility Consumers’ Action Network Comments, CG Docket No. 09-158, at 1-3 (filed Oct. 13, 2009).

²⁴ See, e.g., AT&T Comments, CG Docket No. 09-158, at 17-20 (filed Oct. 13, 2009); CTIA Comments, CG Docket 09-158, at 20 (filed Oct. 13, 2009); Verizon Comments, CG Docket 09-158, at 6 (filed Oct. 13, 2009).

²⁵ Pres. Proc. No. 10707, 89 FR 15949. Biden, Joseph R., Jr. “*A Proclamation on National Consumer Protection Week, 2024.*” March 1, 2024, Government Printing Office, <https://www.govinfo.gov/app/details/DCPD-202400157> (last visited Mar. 26, 2024).

²⁶ *Id.* at para. 4.

²⁷ See Federal Trade Commission, Proposed Rule, 88 Fed. Reg. 24716 (Apr. 24, 2023) (*FTC Negative Option Proposal*).

²⁸ *Id.* (citing example of trial marketing where consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services).

²⁹ 16 CFR § 425.1(a)(1)(i)-(vii). The FTC’s rule enumerates seven material terms sellers must disclose: (1) how subscribers must notify the seller if they do not wish to purchase the selection; (2) any minimum purchase obligations; (3) the subscribers’ right to cancel; (4) whether billing charges include postage and handling; (5) that subscribers have at least ten days to reject a selection; (6) that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and (7) the frequency with which announcements and forms will be sent.

³⁰ See generally, *FTC Negative Option Proposal*.

“free” benefit while failing to clearly and conspicuously disclose future payment obligations.³¹ In addition, several commenters provided specific recommendations for new cancellation rules, including, for example, that the FTC require businesses to provide a cancellation mechanism that mirrors the customer’s method of enrollment.³²

D. Voluntary Industry Standards

12. In 2003, CTIA – a trade association representing the U.S. wireless communications industry – and a number of wireless carriers voluntarily adopted a “Consumer Code” to facilitate the provision of accurate information to consumers by wireless service providers.³³ The signatory carriers voluntarily agree to take certain steps to disclose rates and terms of service to consumers.³⁴ In relevant part, signatories commit to “provide ready access to customer service.”³⁵

13. Specifically, section 8 of the CTIA Consumer Code provides that: “[c]ustomers will be provided customer service contact information, including a toll-free telephone number to access a carrier’s customer service representatives during normal business hours, both online and on billing statements. Each wireless carrier will also provide customers information about how they can contact the carrier in writing, by toll-free telephone number, via the Internet, or through other means of communication with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries, on carriers’ websites, and upon request, to any customer calling the carrier’s customer service departments.”³⁶

III. DISCUSSION

14. Consumers are frustrated with customer service and often are hindered from managing their service plans, including by disputing charges and cancelling unwanted services, when they lack the ability to communicate in an easy and timely manner with their service providers. Consumers file thousands of complaints with the Commission each year relating to cancellation of service, unavailability of service representatives, and automatic renewal of subscription services.³⁷ As the Commission has confirmed previously, competition and market incentives work most efficiently when consumers know the terms of service before picking a provider, can quickly resolve service and billing issues, and can easily change service providers when they are dissatisfied with their current service provider.³⁸

15. For cable consumers, the Commission more than 30 years ago set forth minimum customer service standards.³⁹ Since then, many local governments have imposed customer service standards on their local cable operators that go further than the minimum standards set by the

³¹ *Id.* at 24721.

³² *Id.* at 24724.

³³ See CTIA – Consumer Code for Wireless Service, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Feb. 21, 2024) (CTIA Code).

³⁴ *Id.*

³⁵ *Id.* at sec. 8.

³⁶ *Id.*

³⁷ The Commission has received approximately 22,000 customer service-related complaints since 2022. Specific examples are discussed in more detail below.

³⁸ See, e.g., *Consumer Information NOI*, 24 FCC Rcd at 11387, para. 16.

³⁹ 47 CFR § 76.309; *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2895, para. 10 (“[W]e conclude that the Commission is required to establish baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service to cable subscribers.”). These rules apply only to cable operators and not to other multichannel video programming providers.

Commission.⁴⁰ Despite this, the American Customer Satisfaction Index (ACSI) has consistently ranked subscription television service as having one of the lowest customer satisfaction scores out of all industries surveyed since it began ranking traditional subscription TV service as an industry in 2001.⁴¹ Despite recent ACSI surveys showing a cross-industry increase in customer satisfaction overall and some upward movement in the customer satisfaction scores of cable and satellite TV providers, the industry remains one of the lowest ranking industries.⁴² Cable and satellite TV providers underperform video streaming service providers, nearly tying with Internet service providers at the bottom.⁴³

16. In the time since the Commission adopted its cable customer service rules, the ways in which cable operators deliver their service and interact with their customers has changed significantly. In addition to video programming services, cable operators also have become the leading providers of fixed broadband Internet access service, serving approximately two-thirds of U.S. broadband households.⁴⁴ Further, cable operators now offer their subscribers a variety of bundled service packages, with video, mobile service, and broadband among the services commonly bundled together.⁴⁵ For these double- and triple-play subscribers, the level of customer service provided is even more important when subscribers depend on one provider as the source of more than one communications service. Further, over the last several years customer-provider interaction is increasingly happening online, with subscribers able to sign up for service, order equipment to self-install, and pay bills online through providers' websites and through their apps. Despite the changes in consumers' ability to interact with their cable provider,

⁴⁰ See, e.g., Me. Rev. Stat. tit. 30-A, § 3010 (listing “[c]onsumer rights and protection relating to cable television service” for Maine subscribers, including the right to a pro-rated credit or rebate for the last month of service upon cancellation); 18-1 Vt. Code R. § 8.311-8.368 (listing “conduct of business” regulations for cable franchisees, including customer service requirements such as credit for service outages and bill itemization twice a year); 220 Ill. Comp. Stat. Ann. 5/22-501 (incorporating the Commission’s current standards and adding additional standards).

⁴¹ American Customer Satisfaction Index, *Subscription Television Service*, <https://theacsi.org/industries/telecommunications-and-information/subscription-tv-service/> (last visited May 1, 2024). See e.g., American Customer Satisfaction Index, *ACSI Telecommunications Study 2022-2023*, 15 (Jun. 6, 2023), https://theacsi.org/wp-content/uploads/2023/06/23may_Telecom-STUDY.pdf; American Customer Satisfaction Index, *ACSI Telecommunications Study 2021-2022*, 14 (Jun. 7, 2022), https://theacsi.org/wp-content/uploads/2022/08/22jun_TELECOM-STUDY.pdf (last visited Apr. 11, 2024).

⁴² American Customer Satisfaction Index, *U.S. Overall Customer Satisfaction* (Nov. 7, 2023), <https://theacsi.org/theacsi-difference/us-overall-customer-satisfaction/>; American Customer Satisfaction Index, *ACSI Telecommunications Study 2022-2023*, 15 (Jun. 6, 2023), https://theacsi.org/wp-content/uploads/2023/06/23may_Telecom-STUDY.pdf (last visited Apr. 11, 2024); American Customer Satisfaction Index, *ACSI Telecommunications Study 2021-2022*, 14 (Jun. 7, 2022), https://theacsi.org/wp-content/uploads/2022/08/22jun_TELECOM-STUDY.pdf (last visited Apr. 11, 2024).

⁴³ American Customer Satisfaction Index, *Subscription Television Service*, <https://theacsi.org/industries/telecommunications-and-information/subscription-tv-service/> (last visited Jan. 21, 2024); American Customer Satisfaction Index, *Video Streaming Service*, <https://theacsi.org/industries/telecommunications-and-information/video-streaming-service/> (last visited Jan. 21, 2024); American Customer Satisfaction Index, *Wireless Phone Service*, <https://theacsi.org/industries/telecommunications-and-information/wireless-phone-service/> (last visited Jan. 21, 2024); American Customer Satisfaction Index, *Internet Service Providers*, <https://theacsi.org/industries/telecommunications-and-information/internet-service-providers/> (last visited Jan. 21, 2024).

⁴⁴ John Fletcher, *The History of U.S. Broadband*, S&P Capital IQ (May 9, 2023), <http://www.capitaliq.com>; 2022 *Communications Marketplace Report*, 2022 WL 18110553 at *11, para. 30 36 FCC Rcd at 3011-12, para. 99.

⁴⁵ Brian Bacon, *TV Service Bundling 2022*, S&P Capital IQ (Sept. 8, 2022), <http://www.capitaliq.com/> (“When it comes to bundling TV with other services, home broadband is king, with 71% of traditional multichannel TV subscribers indicating their internet service was part of their monthly bill.”); Tony Lenoir, *Cable Double-Play Subscribers Fall for 1st Time in Nearly 4 Years in Q1*, S&P Capital IQ (May 26, 2021), <http://www.capitaliq.com/>.

consumers should still be able to select and switch cable providers quickly and easily when they so choose and resolve service and billing issues efficiently when they arise.

17. Indeed, for all services, technology has fundamentally altered the ways in which customers interact with their service providers, the latest being the burgeoning use of artificial intelligence (AI) technologies that can generate voice and text content to interact with customers. The Commission has not adopted customer service requirements for DBS, voice, and broadband services although consumers of such services face similar challenges in addressing customer service issues as cable subscribers. We thus inquire whether we should review our existing customer service standards for cable operators and explore whether to establish standards for DBS, voice, and broadband service providers. In so doing, we seek comment on whether and how the Commission's customer service standards keep pace with technological and business advancements within the communications industry and are effective in providing subscribers with basic protections. Specifically, we seek information on existing customer service practices, including whether subscribers can cancel service in simple and direct ways, reach a live representative when they have questions or concerns, and avoid automatic renewal of services that they do not wish to retain.

18. While we seek comment on whether we should consider a single set of customer service requirements across the different communications sectors, we do so cognizant that the regulatory background for cable and satellite television is different from that of the other services we address today. For cable, that background includes a history of customer service standards the Commission largely relies on local franchising authorities (LFAs) to administer. In regard to the customer service issues discussed below, we seek comment on how those relate to these existing standards for cable television, along with the unique relationship between those standards and LFAs. In addition, we seek comment on the Commission's authority to address the customer service issues set forth herein.

A. Simple Cancellation

19. It appears that service providers often make it simple to sign up for a service but limit the ability of subscribers to cancel that same service. What is more, some service providers may require subscribers to cancel service by phone on lines with limited operating hours and extended wait times before connecting to a live agent who can process the cancellation request.⁴⁶ Adding such limitation or restrictions to customer service or support hinders the ability of consumers to cancel services, and thereby impairs the functioning of the competitive marketplace by making it difficult to switch service providers. Furthermore, if the consumer has a language barrier or disability, limiting cancellation options may create additional undue hardships.

20. We seek to confirm whether service providers make available simple and direct cancellation methods to their subscribers.⁴⁷ If not, we seek comment on whether there are reasons to explore whether covered service providers should offer more than one mechanism to cancel subscription services, including cancellation mechanisms that mirror any available method that consumers can use to subscribe to the service. For example, if a consumer can subscribe to a service using the service provider's website, we seek comment on whether they should also be allowed to cancel their service using the service provider's website ("click-to-cancel"). Alternatively, should service providers allow customers to cancel using the service provider's website in every instance regardless of the methods available to subscribe to the plan?

⁴⁶ See, e.g., Consumer Complaint #5610981 (repeated efforts to reach their service provider to cancel service had failed); Consumer Complaint #6065053 (unable to reach wireless service provider to cancel service); Consumer Complaint #6090779 (unable to cancel service over a two week period due to the inability to get anyone to answer the phone).

⁴⁷ As noted above, unless otherwise indicated herein, the term "service provider" will refer collectively to cable operators, DBS providers, voice service providers, and broadband service providers.

21. We also seek comment on whether service providers clearly and conspicuously disclose how subscription services can be cancelled at the point of sale and on billing statements. If not, are there ways we could better ensure that consumers have reasonable access to the information they require to implement any decision to cancel their existing service in a timely manner? In that regard, we seek comment on whether DBS, voice, and broadband service providers maintain operating hours for customer service phone lines to accommodate customer needs including the ability to process cancellation requests.

22. As part of this inquiry, we seek to confirm the methods by which service providers currently permit consumers to subscribe to their services (*e.g.*, in-person, phone, email, or website) and whether these same methods are available to their subscribers to cancel service. We also seek comment on whether service providers disclose to the consumer how subscription services can be cancelled (*e.g.*, on billing statements, at points of sale, or on websites)?⁴⁸

23. Where a subscriber must cancel service by speaking to a live representative by phone regardless of the method used to subscribe to a service, we seek comment on any limitations imposed on their ability to do so. For example, what are the days and hours of operation when such cancellation requests must be made? How long on average does it take from the time the subscriber calls until they reach a live representative to cancel their service – including any time spent on hold or working through support menus? Are there any specific reasons or benefits from requiring customers to speak with a live representative to cancel service that could not be preserved using other means of cancellation? What options are available for callers with communication barriers to cancel service? Do service providers offer Direct Video Calling (DVC) for subscribers who use American Sign Language (ASL) to reach a service representative who can communicate in ASL?⁴⁹

24. For those service providers that offer subscribers the ability to cancel online or by means other than reaching a live representative by phone such as the use of Interactive Voice Response (IVR) systems, how do these methods compare to cancellation via live representatives in terms of days and hours of availability? For example, are online resources available 24 hours a day, seven days a week? Or are there limitations on when and how cancellation requests can be processed in this context? As discussed further below, are there any accommodations given to individuals with disabilities or non-English speaking consumers to ensure that they can cancel service, such as via a dedicated customer service line, website or other means than reaching a live representative?

25. Have there been any significant industry changes over the last decade that have impacted the ability of subscribers to cancel their service? For example, have technologies advanced to more readily allow consumers to cancel their service by phone or other automated means without having to talk to a live service representative? To what extent, if any, has the recent COVID-19 pandemic or other circumstances had an impact on the ability of service providers to staff customer service lines with live representatives?

26. We also seek comment on any privacy issues that might arise in the service cancellation context. Do service providers routinely collect new information (*e.g.*, reasons for cancellation, interest in alternative services or products), or utilize existing information (*e.g.*, price of service, usage of service), in their attempts to retain subscribers, following cancellation requests? If so, does the collection or use of

⁴⁸ We note that, in 2019, Congress adopted the Television Viewer Protection Act of 2019 (TVPA), which bolstered the consumer protection provisions applicable to multichannel video programming distributors (MVPDs) by adding, among other things, requirements for greater transparency in subscribers' bills. Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA requires MVPDs to, not later than 24 hours after contracting with a consumer, provide the total monthly charge that a consumer can expect to pay and permit the consumer to cancel without fee or penalty for 24 hours, though it does not specify the means by which consumers should be permitted to cancel. *See* 47 U.S.C. § 562(a)(2)-(3).

⁴⁹ Direct Video Calling is a “telephone customer support operation that enables callers with hearing or speech disabilities to engage in real-time direct video communication in ASL with ASL speakers in a call center operation.” 47 CFR § 64.601(16); for more information, *see* www.fcc.gov/DVC.

such information raise any issues under sections 222, 338(i), or 631 of the Communications Act for telecommunications carriers, satellite carriers, and cable operators respectively? Does the collection or use of such information to retain subscribers fit within exceptions to these provisions that allow for the collection or use of information to “render” a service?⁵⁰ Alternatively, do service providers obtain “approval” or “consent” from their subscribers, in the ordinary course, to collect or use subscriber information for such purposes?⁵¹ Are there differences in service providers’ collection and/or use of subscriber information, depending on the method by which the subscriber attempts to cancel—*e.g.*, are there differences between cancellation via live agent and click to cancel? Should we consider any baseline consumer privacy protections for service cancellations, irrespective of method?

27. The process of returning rented equipment to service providers represents a critical part of cancelling service. Should the process of equipment return upon cancellation be subject to similar standards of disclosure and reasonable methods for the same consumer protection reasons discussed above? Some consumers have complained about the burden of return options presented to them that would require they travel hours to the nearest provider retail location or postal office.⁵² If a consumer received their equipment via mail to their home address, do providers allow them to mail back their equipment from their home address? For example, do service providers provide consumers boxes and return labels for their equipment regardless of whether the equipment was initially mailed, picked up, delivered, or installed by a service technician? If not, to what extent does this hinder the ability of consumers to cancel service? Some providers offer the option to have a technician pick up the equipment for a fee, but availability and fee amounts vary considerably. Should this option be available to consumers and, if so, should the cost be regulated? What, if any, accommodations are made for consumers with disabilities who may be unable to return equipment on their own?⁵³

28. Are there other considerations that we should take into account? For example, how might updated customer service standards regarding cancellation impact smaller entities? Are there less burdensome alternative means that would allow us to ensure that subscribers can request cancellation of service in an easy and timely manner? Should we extend customer service protections to all customers including enterprise customers; or conversely should they be limited to only individual consumer customers? Do customer service issues differ for enterprise customers in such a way that any customer service protections should vary for those customers? Are there ways in which we might work with industry groups to promote voluntary solutions and/or consumer education initiatives to raise awareness of the methods available to cancel subscription services? How effective have voluntary initiatives such as the CTIA Consumer Code been to ensure that customers have access to the customer service resources that they require? What accessible methods of communication for cancellations do service providers offer for subscribers with hearing and speech disabilities? We seek comment on these and any other possible solutions in this context that would advance customer service protections without creating undue burdens on service providers. We also seek comment on the timeframe that would offer affected service providers a reasonable opportunity to comply with any customer service practices we contemplate in this notice.

⁵⁰ See 47 U.S.C. §§ 222(d)(1), 338(i)(3)(B)(i); 551(b)(2)(A).

⁵¹ See 47 U.S.C. §§ 222(c)(1), 338(i)(3)(A); 551(b)(1).

⁵² See, *e.g.*, Consumer Complaint # 6854290 (provider would not send a return label, consumer was forced to spend over four hours driving to retail location and waiting to be served, resulting in lost wages); Consumer Complaint #273111 (consumer felt deceived by not being informed of their provider’s policies for returning equipment upon signing up); Consumer Complaint # 4592749 (consumer was told to take equipment to UPS or FedEx, which would require over an hour drive each way).

⁵³ See, *e.g.*, Consumer Complaint #5653184 (elderly and disabled consumers unable to climb roof to get equipment); Consumer Complaint #6512970 (disabled consumer unable to return equipment without assistance); Consumer Complaint #6241323 (elderly consumer cannot retrieve equipment, provider offered technician to assist for \$95.00).

B. Access to Live Representatives

29. We seek comment on whether service providers offer live customer service representative support by phone within a reasonable timeframe. Consumers are understandably frustrated when they need to speak to a live customer representative to resolve their service or billing issue but are unable to do so because the service provider does not provide access to a live agent or they must wait on hold for extensive periods of time, receive a busy signal, or navigate confusing menu lists to eventually reach a live representative.⁵⁴ We also seek comment on what timeframe would be reasonable, for these purposes.

30. The Commission's rules already require that cable operators maintain an active "local, toll-free or collect call telephone access line," with trained representatives able to respond to callers "during normal business hours," after which time "the access line may be answered by a service or an automated response system, including an answering machine."⁵⁵ The rule also requires that "under normal operating conditions," neither initial call wait time nor transfer time shall exceed 30 seconds, and that callers receive busy signals less than three percent of the time.⁵⁶ The rules also provides that "customer service center and bill payment locations" must be open "at least during normal business hours" in "conveniently located" areas.⁵⁷ Do cable operators meet these obligations? Does this rule address any concern about whether consumers have access to a live agent within a reasonable amount of time? Are aspects of this rule outdated or ineffective, such that we should consider reviewing this rule for cable providers?

31. In effectuating our goal that video, voice, and broadband customers have access to a live agent within a reasonable amount of time, should we consider extending our cable customer service requirements to DBS, voice, and broadband service providers? We seek comment on harmonizing these requirements including what constitutes a "reasonable amount of time" to provide access to a live agent in this context. To what extent do voice, broadband, and satellite TV service providers currently offer access to live customer representative support for consumers, and what are the days and hours of operation for that support? To the extent that service providers offer an option for customers to reach a live representative through their customer support lines, we seek comment on how subscribers gain access to the live representatives. For example, do consumers have the ability to contact a live representative directly and avoid navigating through a menu list of other customer service options before being allowed to speak to a live representative?

32. Should we explore whether to allow customers to dial "0" to reach a live agent? What is the current process consumers have to follow before reaching a live representative? What options are available for consumers to receive a call back, and how can consumers ensure that a call back occurs at a time that is convenient to them? Should there be established expectations about a timeframe in which a consumer may reasonably expect to receive a call back? Once a consumer expresses a desire to be placed in contact with a live representative, what are the average wait times before they can begin to communicate with that representative? Do providers address customer concerns and questions expeditiously, or are customers experiencing extended wait times, or being asked to pay a service fee to skip call wait times? To the extent customers are paying service fees, should we review such fees for potential abuses? Are there any reasons or benefits to the service provider or subscribers from using an alternative means of customer support before reaching a live service representative?

⁵⁴ See, e.g., Consumer Complaint #5316768 (unable to reach service representative by phone); Consumer Complaint #6195229 (unable to reach a live customer service representative and placed on hold for extensive periods of time); Consumer Complaint # 6397170 (no live customer service representative available).

⁵⁵ 47 CFR § 76.309(c)(1)(i).

⁵⁶ 47 CFR § 76.309(c)(1)(ii), (iv).

⁵⁷ 47 CFR § 76.309(c)(1)(v).

33. Here too, we seek comment on privacy issues related to updated customer service requirements regarding access to live representatives. Do service providers, or their vendors, routinely record customer interactions with IVR systems—e.g., to help train those systems? How might their practices change as AI technologies become more commonplace? Likewise, do providers, or their vendors, routinely record conversations between subscribers and live representatives—e.g., for quality assurance, training, or accountability purposes? In either case, are callers afforded notice and the opportunity to consent to such recording? Does that notice or consent disclose the purpose for which the recording may be used (e.g., whether it may be used to train AI systems)? To whom are such recordings disclosed, and how are they maintained, used, processed, etc.? Do such recordings qualify as “proprietary information . . . of customers,” “customer proprietary network information,” or “personally identifiable information” under relevant provisions of the Act? If so, are there baseline privacy protections that we should consider related to customer service calls generally, and specifically to a requirement that providers offer live customer service representative support by phone within a reasonable timeframe? Are there other laws, including Federal or state wiretap or interception laws, that provide sufficient protections in this area?

34. We also seek comment on to what extent, if any, emerging AI technologies would impact a requirement that service providers offer live customer service support. For example, are such technologies currently in use to respond to customer service inquiries that can generate the equivalent of an interaction with a live agent to answer questions concerning the subscriber’s account, including the ability to resolve the consumer’s complaints regarding billing charges and service plans? If so, should the use of such technologies be permitted as a full or partial alternative to providing access to a live service representative? If not, in what time frame do service providers anticipate AI technologies will be able to operate as an equivalent? Should service providers be required to notify customers when they are interacting with an AI technology, and not a live service representative? To what extent does the availability of any self-service or real-time chat options through service provider websites obviate the need to speak with a live service representative?

35. As discussed above, the Commission’s truth-in-billing rules already require common carriers to “prominently display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill.”⁵⁸ This provision, however, does not specify that such calls be answered by a live representative or otherwise place parameters on acceptable wait times or busy signals before customers connect to a live representative.

36. Are there specific issues relating to the ability of non-English speaking consumers or individuals with disabilities to reach a live representative that we should be aware of and could address?⁵⁹ For example, do providers currently have customer service lines dedicated to communicating with non-English speaking subscribers or individuals with disabilities, such as DVC support lines for users of ASL and specially trained consumer service agents to handle accessibility-related questions?⁶⁰ If so, how long

⁵⁸ See 47 CFR § 64.2401(d). The rule allows for the toll-free number to be that of “a billing agent, clearinghouse, or other third party, provided such provider possess sufficient information to answer questions concerning the subscriber’s account and is fully authorized to resolve the consumer’s complaints on the carrier’s behalf.”

⁵⁹ In a recent Order, the Commission required covered providers in a different context to accommodate for certain subscriber requests “all the languages in which the covered provider currently advertises its services as well as all formats (e.g., large print, braille, etc.) in which the provider makes its service information available to persons with disabilities.” See *Supporting Survivors of Domestic and Sexual Violence*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order, FCC 23-96 at para. 63 (2023).

⁶⁰ See, e.g., *Communication Service for the Deaf*, Petition for Declaratory Ruling Regarding Direct Video Calling Service, CG Docket Nos. 10-51 and 03-123, at 3-11 (filed Mar. 31, 2023) (describing how direct video calling to customer service support centers helps overcome the communication difficulties experienced by sign language users); *Telecommunications for the Deaf and Hard of Hearing, Inc. and National Association of the Deaf*, Comments of Accessibility Advocacy Organizations, CG Docket Nos. 10-51 and 03-123, at 4-8 (filed June 5, 2023) (continued....)

on average does it take for customers to reach a customer service representative on the dedicated line? Do the hours of operation and wait times vary in any significant respect for these consumers in comparison to other customer service lines? What requirements might best balance the need for customers to have an easy means of reaching their provider's customer service representatives, with the business needs and limitations of providers, including smaller entities? For example, if customers signed up for service in a language other than English, should it be a requirement that they have access to customer service representatives in that language?

37. We also seek comment on whether service providers integrate customer service mechanisms to avoid “bouncing” consumers from one menu list to another in a time-consuming effort to obtain resolution of a service or billing issue. A consumer may call a customer service line, and work through the support menu, only to find themselves transferred to another customer service line on which they have to begin anew to work their way through a complex maze of menus repeating their concern each time before they are able to gain access to the customer service mechanism that they require to resolve their issue. Are there ways we might address this issue? What if any options are available in the support menu for consumers with language barriers or disabilities, for example, consumers using telecommunications relay services?

38. How often are consumers transferred from one method of customer service resolution (e.g., chatbot and automated tools) to others in an effort to resolve their issues?⁶¹ Do service providers track the efficiency of the customer service process to ensure that consumers are not trapped in a complex maze of support menus before their issue can be resolved? If not, should service providers allow customers to give feedback on the quality of the customer service they received, including whether their issue was resolved, and whether the representative was knowledgeable about the issue? Would it be helpful for service providers to make such feedback public to allow consumers to assess which service providers are most responsive to customer concerns? During calls consumers may need to state and restate identifying credentials like an account number or security code to proceed with a call. To what extent are customer service mechanisms integrated to avoid requiring consumers to repeat their credentials or concerns multiple times before reaching a resource that can address and resolve their concern?

39. Finally, we seek comment on consumer experiences and expectations regarding physical customer service centers and bill payment locations. Do customers find these centers to be conveniently located and open during normal business hours? If not, should we consider addressing this situation? In that regard, given the widespread availability of online bill pay, do customers continue to use the physical locations for bill payments? If so, to what extent would it be helpful for service providers to offer an option to make payments online or by other options that do not require the customer to travel to a designated service center?

C. Installations, Outages, and Service Calls

40. We seek comment on whether we should review customer service practices regarding installations, outages, and service calls. We also seek comment on the current state of customer service in these areas and whether we should consider reviewing existing standards.

41. The Commission's existing standards for cable operators provide that: (1) “standard installations” will be performed within seven business days after an order is placed; (2) under normal operating conditions, the cable operator will begin working on “service interruptions” promptly and no later than 24 hours after the cable operator becomes aware of the interruption; (3) the “appointment window” for service calls and installations must be at a specified time, or at maximum, a four-hour time block during normal business hours, however “the operator may schedule service calls and other

(describing how DVC can improve the communications experience with customer service centers for sign language users).

⁶¹ “Chatbots” are computer programs that can interact via voice or text with customers.

installation activities outside of normal business hours for the express convenience of the customer;” (4) any operator cancellation of an appointment must occur before the close of business on the business day prior to the scheduled appointment; and (5) representatives of cable operators running late for an appointment must contact and inform the consumer of the delayed arrival and, if necessary, reschedule the appointment at a time convenient for the customer.⁶²

42. Should we consider updating these standards or consider strengthening them? For example, is a four-hour time block for installations still reasonable today? Should we consider whether providers should offer a credit to the consumer’s bill if they fail to attend a scheduled service appointment without appropriate prior notification as required above? Consumers complain about the hardship of making themselves available for service appointments only to have their scheduled service technician not show up.⁶³ Should providers offer options for service times outside of normal business hours for the express convenience of the customer? Given the increase in self-installations by customers, should there be any standards regarding self-installations of cable service, including assistance to customers, should the customer confront difficulties? And should we explore whether it would advance the interests of voice, broadband, and satellite TV subscribers to consider similar standards for those service providers? For example, should we explore key terms as defined in the cable context such as “standard installations,” “interruptions,” “outages,” when applied to other services?⁶⁴ Do these services require the same type of physical, at-home work as cable?

43. Do some providers notify consumers ahead of planned outages or reimburse consumers after outages that extend beyond a certain number of hours in compliance with industry best practices? How strictly do service providers adhere to these practices? Should providers notify consumers ahead of planned disruptions of service?⁶⁵ Should providers offer credits for service interruptions that meet certain criteria?⁶⁶ If so, what considerations should be weighed in determining the criteria for when such credits would be appropriate? With regard to outages, would basic service level restoration standards set expectations for when common problems should be resolved?

D. Automatic Renewal of Service or Price Increases

44. Service providers often advertise discounted trial or promotional periods to entice consumers to subscribe to their services without clearly disclosing future price increases or automatic renewal of such services absent an affirmative act by the subscriber. Consumers who sign up for a trial or promotional period while providing the service provider with a credit card or billing information risk being automatically renewed or unable to unsubscribe because they lack notice that the trial or promotional period is ending and often must affirmatively opt-out to avoid extension of the service.

45. We seek comment on whether service providers interpret a consumer’s silence, or failure to take an affirmative act, as consent to extend a trial period. If so, we seek comment on whether

⁶² 47 CFR § 76.309(c)(2).

⁶³ See, e.g., Consumer Complaint #5737686 (consumer stayed home and missed work, and both appointments were missed); Consumer Complaint #6602371 (consumer lost three days wages to be available for appointments for which technician did not contact or show up); Consumer Complaint #2917617 (consumer unable to communicate with technician and confirm arrival due to being a third party contractor, technician didn’t show and consumer suffered lost wages).

⁶⁴ See 47 CFR § 76.309.

⁶⁵ We note that section 76.1603 provides that cable operators must notify their subscribers “as soon as possible” when service changes occur due to failed retransmission consent or program carriage negotiations. 47 CFR § 76.1603(b).

⁶⁶ The Commission recently proposed adopting rules that would require cable and satellite TV providers to issue rebate credits to subscribers in the event of programming blackouts resulting from failed retransmission consent negotiations or failed non-broadcast carriage negotiations. *Customer Rebates for Undelivered Video Programming During Blackouts*, MB Docket No. 24-20, Notice of Proposed Rulemaking, 2024 WL 212126 (2024).

consumers should be provided with notice and a reasonable opportunity to end any such service before incurring any new or increased cost? The Commission recently adopted customer service requirements for cable and satellite TV providers related to introductory or discount pricing.⁶⁷ Specifically, for introductory or limited duration prices such providers “shall state on subscribers’ bills the date the price ends, by disclosing either the length of time that a discounted price will be charged or the date on which a time period will end that will result in a price change for video programming, and the post-promotion rate 60 and 30 days before the end of any introductory period.”⁶⁸ The rules further require that if providers include price in promotional materials, if “part or all of the aggregate price is limited in time, then the provider must state the post-promotion rate, as calculated at that time, and the duration of each rate that will be charged.”⁶⁹

46. We seek comment on whether similar standards for voice and broadband service providers to obtain the explicit consent of the subscriber to continue service after a trial or promotional period has expired and to provide clear and conspicuous notice to the consumer prior to any proposed increase in subscription costs or service rates resulting from the expiration of any trial or promotional period for that service would benefit subscribers of those services.

47. To what extent do service providers automatically renew services or plans without obtaining any further consent from the subscriber? To the extent that services are automatically renewed, do service providers offer a grace period in which the consumer can opt out of the service without being obligated to pay any increased cost? We seek comment on whether we should consider extension of the requirements included in the *All-In Pricing R&O* for cable and DBS subscribers for voice and broadband service providers.⁷⁰ In the alternative, we seek comment on whether voice and broadband providers should provide subscribers with notice of at least two full billing cycles prior to a proposed increase in subscription costs or service rates. We seek comment on these issues including any specific alternatives that we should consider in this context. Relatedly, our rules specify the timeline for cable operators to issue refund checks and credits to subscribers.⁷¹ Should we consider similar standards for voice, broadband, and satellite TV services?

48. We seek comment on the extent to which service providers offer trial or promotional subscriptions to new or enhanced services that can result in automatic renewal with increased costs to consumers after some specified trial or promotional period. In this context, we seek information on whether service providers require payment information for the initial trial or promotional subscription that allows them to automatically renew and continue to bill subscribers upon the expiration of any such trial or promotional period without further action by the subscriber. Must the subscriber provide consent before being renewed beyond the trial or promotional period, or do subscriptions renew without any further action by the subscriber? When signing up for the trial subscription, do any trial subscriptions offer consumers the option to initially opt-out of automatic renewal? What types of limitations are placed on the customer’s ability to cancel a trial or promotional subscription or enhanced service? For example, can subscribers cancel up to the last minute prior to the expiration of a trial or promotional period? What, if any, advanced notice or reminders are voice and broadband subscribers given that a trial or promotional

⁶⁷ *All-In Pricing R&O*, 2024 WL 1236499, *12-14, paras. 26-30.

⁶⁸ 47 CFR § 76.310(a).

⁶⁹ 47 CFR § 76.310(b). For purposes of this section the term promotional material “includes communications offering video programming to consumers such as advertising and marketing.” *Id.*

⁷⁰ See *All-In Pricing R&O*, 2024 WL 1236499, *12-14, paras. 26-30

⁷¹ 47 CFR § 76.309(c)(3)(i) (requiring that (1) refunds must be issued no later than the customer’s next billing cycle following resolution of the request or thirty days, whichever is earlier, or upon the return of equipment when service is terminated, and (2) credits for service must be issued no later than the customer’s next billing cycle following the determination that a credit is warranted).

period is ending and that they may be subject to increased costs for their service?⁷² If provided with notice, what is the typical timeframe voice and broadband subscribers are given to exercise their ability to cancel the service? Does this notice provide clear instructions on how to cancel such services before the new charges are applicable?

49. Are there benefits to both service providers and consumers that should be taken into consideration in this context where services are automatically renewed without any affirmative act by the subscriber? For example, does automatic renewal allow consumers to receive services seamlessly without the potential for disruption or cancellation if they inadvertently fail to confirm that they wish to continue receiving a service? To what extent is lower trial or promotional period pricing contingent on consumers retaining their service for some period of time beyond the expiration of the trial or promotional period? In circumstances in which service agreements or contractual provisions require the consumer to retain the service beyond the trial or promotional period, how is it made clear to the consumer that the price for such service may increase following the expiration of the trial or promotional period?

50. Are there any other federal or state laws, including bodies of existing contract law, that offer consumers protections from unwanted automatic renewals of services that are applicable in this context? Do any of these laws protect service providers in ways that are inconsistent with the measures discussed herein? If so, are there state laws or contractual precedents that we should consider preempting to ensure that consumer protections are not undermined by these laws? We seek comment on these and any other issues that commenters would like to address, including any alternatives or ways to limit burdens on smaller entities in this context.

E. Individuals with Disabilities and Speakers of English as a Second Language

51. The Commission's accessible customer service rules apply to telecommunications and advanced communications service providers and equipment manufacturers, as well as to manufacturers of covered digital apparatus designed to receive or play back video programming.⁷³ Such providers and manufacturers must provide customer service that is accessible to and "usable" by people with disabilities under sections 255, 303(aa)(1), and 716 of the Act.⁷⁴ The term "usable" is interpreted to mean that documentation, customer service, and technical support provided to consumers must be accessible to people with disabilities.⁷⁵ The Commission requires telecommunications and advanced communications

⁷² As we note above, cable and DBS providers are required to provide 60 and 30 day notice to subscribers on their bills that an introductory or discounted pricing will end. 47 CFR § 76.310(a).

⁷³ "Advanced communications services" are interconnected Voice over Internet Protocol, non-interconnected Voice over Internet Protocol service, electronic messaging service, interoperable video conferencing services, and 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. 47 U.S.C. § 153(1).

⁷⁴ 47 U.S.C. §§ 255, 303(aa)(1), 617. In addition, the Commission's rules require accessible information, documentation, and training requirements for MVPDs with respect to video program guides and menus provided by navigation devices pursuant to section 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). Pub. L. No. 111-260, 124 Stat. 2751, § 205 (2010); 47 U.S.C. § 303(bb). See 47 CFR § 79.108(d) (requiring, among other things, that MVPDs clearly and conspicuously inform consumers about the availability of accessible navigation devices when providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, and must have a contact office or person listed on their website that must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features); 79.108(f) (requiring, among other things, that MVPDs ensure access to information and documentation they provide about navigation devices to customers, if achievable, including user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product).

⁷⁵ 47 CFR §§ 6.3(l); 7.3(l); 14.21(c), 79.107(a)(5).

service providers and equipment manufacturers to ensure access to information and documentation it provides to its customers, if achievable or readily achievable.⁷⁶

52. We seek comment on ways in which we can improve the accessibility of customer service resources from service providers for individuals with disabilities. We invite comment on the current state of accessible customer service. Is the main customer service telephone line accessible to individuals with disabilities? Are individuals with disabilities able to reach customer service representatives through the main customer service line? To what extent do service providers maintain customer support staff for accessibility by individuals with disabilities? If there are dedicated customer support lines, do customers find that call representatives answering the main customer support line are trained to transfer individuals with accessibility concerns to the dedicated staff? If we were to require providers to allow customers to dial “0” to reach a live agent, should we also require providers to implement alternatives for customers who, because of a disability, cannot dial “0” or speak “zero” into a handset?

53. Do service providers make customer service support available in ASL through DVC?⁷⁷ Is installation, outage, and service information easily accessible to people with disabilities? If not, are there ways that we might facilitate the provision of such information? Furthermore, are there any other customer service areas germane to access for individuals with disabilities for which we should consider baseline standards?

54. Do sections 201, 255, 303, and 716 of the Act or other relevant legal authorities give the Commission authority to adopt additional rules to help ensure that individuals with disabilities have reasonable access to voice and broadband customer service information?⁷⁸ We seek comment on these and any other issues relevant in this context. We also note, for example, that there may be unique privacy interests for individuals with disabilities and non-native-English speakers.⁷⁹ Do service providers track which of their subscribers are individuals with disabilities or English as a Second Language (ESL) speakers—e.g., to facilitate more efficient interactions with those subscribers? If so, do the benefits of such tracking outweigh the privacy risks that arise from the collection and maintenance of sensitive information? Does disability or ESL status qualify as protected information under sections 222, 338(i), and 631 of the Act? Are there baseline or heightened protections that we should consider applying to the collection, use, processing, maintenance, or disclosure of information related to a subscriber’s disability or ESL status?

55. Do sections 632 and 335(a) of the Act give the Commission authority to adopt rules to help ensure that people with disabilities have accessible cable customer service?⁸⁰ We invite comment on the current state of accessible customer service for individuals with disabilities. To what extent do providers maintain a dedicated support staff for accessibility services and features, such as closed

⁷⁶ 47 CFR §§ 6.11; 7.11; 14.20(d). Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. 47 CFR §§ 6.11; 7.11; 14.20(d).

⁷⁷ See *supra* note 49.

⁷⁸ 47 U.S.C. §§ 201, 255, 303, 617.

⁷⁹ See, e.g., Office Of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, *Preparing for and Responding to a Breach of Personally Identifiable Information*, M-17-12, at 21 (2016) (noting that sensitivity of PII may be higher for vulnerable populations).

⁸⁰ The statute directed the Commission to adopt standards that at a minimum included requirements governing communications between a cable operator and a subscriber. 47 U.S.C. § 552(b).

captioning,⁸¹ audio description,⁸² and other accessibility features for televisions, set-top boxes, and similar devices?⁸³

56. Regarding ESL speakers, how do all the issues we raise in this NOI impact consumers that do not primarily speak English? Are there other considerations regarding these consumers that we have not included here?

F. Cable-Specific Issues

57. *Local Franchise Authority Developments.* We seek comment on whether and how changes in cable franchising should affect our exploration of cable-specific customer service standards. In addition to the industry changes summarized above, the structure of local franchise authorities has also changed significantly. Since 2005 many states have adopted statewide franchise laws that replaced municipal-level franchise authority with state-level franchise authorities in an effort to facilitate entry by new competitors.⁸⁴ Some states now have only state-level franchise authority,⁸⁵ a few have adopted limited state-level franchising,⁸⁶ and other states offer the cable operator a choice between state or

⁸¹ Closed captioning is generally defined in our rules as “[t]he visual display of the audio portion of video programming.” 47 CFR §§ 79.1(a)(2); 79.4(a)(6); *see also id.* § 79.1(b) (listing closed captioning requirements for televised video programming); *id.* § 79.4 (listing requirements for closed captioning of Internet protocol-delivered video programming); FCC Video Programming Distributors (VPD) Closed Captioning Contact Information at www.fcc.gov/vpdregistry (explaining that all VPDs must provide and maintain current contact information in the VPD Registry for consumers to report closed captioning concerns and complaints).

⁸² Audio description is defined in our rules as “[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.” 47 CFR § 79.3(a)(3). *See id.* § 79.3(b)(4)-(5) (listing audio description requirements for MVPDs).

⁸³ Pursuant to the CVAA, the Commission adopted rules in 2015 that require MVPDs to list a contact office or person on their website that must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. *See* 47 CFR § 79.108(d)(1)(ii); *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015).

⁸⁴ Dana A. Scherer, *Potential Effect of FCC Rules on State and Local Video Franchising Authorities*, Congressional Research Service, at 9 (Jan. 9, 2020), <https://crsreports.congress.gov/product/pdf/R/R46077>; *see also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable TV Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Third Report and Order, 34 FCC Rcd 6844, 6905, para. 114 & n.426 (2019) (*Section 621 Third Report and Order*).

⁸⁵ *See e.g.*, Ca. Pub. Util. Code § 5840(a) (providing that the California Public Utilities Commission “is the sole franchising authority for a state franchise to provide video service”); Fla. Stat. § 610.102 (designating the Department of State as the franchising authority for a state-issued franchise, and providing that a municipality or county may not grant a new franchise for the provision of video or cable service); Ind. Code Ann. § 8-1-34-16(a)(1) (designating the Indiana Utility Regulatory Commission as “the sole franchising authority . . . for the provision of video service in Indiana”); Mo. Rev. Stat. §§ 67.2679(3)-(4) (requiring a person to obtain state-issued video service authorization, and granting Missouri Public Service Commission exclusive authority to authorize construction or operation of video service network); N.C. Gen. Stat. Ann. § 66-351(a) (granting Secretary of State exclusive franchising authority in the state for “cable service provided over a cable system”); Ohio Rev. Code Ann. § 1332.24(A)(2) (designating director of commerce as the sole franchising authority for video service authorizations in the state); Wis. Stat. Ann. § 66.0420(4) (“ . . . the state is the exclusive franchising authority for video service providers in this state”).

⁸⁶ *See e.g.*, Del. Code Ann. 26 §§ 601 (authorizing the Public Service Commission to grant franchises outside of municipalities), 608 (allowing municipalities to grant franchises subject to Commission review); Nev. Rev. Stat. Ann. § 711.410 (granting exclusive franchising authority to the Secretary of State except in counties with populations under 100,000); W.Va. Code Ann. §§ 24D-1-3(d)-(e) (providing that the Public Service Commission act as the franchising authority in the event local authority elects not to act as the franchise authority).

municipal-level oversight.⁸⁷ We seek comment on how these changes have affected local customer service enforcement. Can cable subscribers easily identify whom to contact about alleged violations of customer service standards? Are there other issues that we should consider given that statewide franchising has become more prevalent since the Commission adopted the current customer service standards?

58. *State of Existing Customer Service Standards.* We seek comment on the current state of cable operator customer service laws generally. To what extent do local franchising authorities adopt and enforce the current federal standards? To what extent and in what respects have they exceeded these standards by adopting additional customer service requirements? Should the fact that cable operators are losing video subscribers be relevant in this proceeding and, if so, how?

59. We also seek comment on whether and how the significant changes in the cable marketplace over the last 31 years should affect our customer service rule. For one, the video programming marketplace has become much more competitive since Congress passed the 1992 Cable Act. While, in the past, consumers might only have had access to one pay television service, today they have access to multiple pay television services as well as online video programming.⁸⁸ Nevertheless, cable operators retain a significant position in the video programming marketplace, with cable video subscriptions totaling approximately 37.5 million nationwide in 2023 for a total of about 67 percent of traditional multichannel video subscriptions.⁸⁹ Despite the prominence of cable in the media marketplace, evidence suggests that some customers have been consistently dissatisfied with their cable providers.⁹⁰

60. *Additional Standards.* We seek comment on what, if any, additional standards we should consider to ensure that the Commission's standards are meaningful and effective in today's marketplace. Section 632(b) directs the Commission to establish standards that "include, at a minimum" requirements for cable operators addressing the three areas discussed above.⁹¹ Previously, the Commission found that these three areas represented "the major areas of customer service based on levels of discontent found by

⁸⁷ See e.g., Ark. Code Ann. § 23-19-203(a) (allowing a video service provider to elect either a local franchise or a certificate of franchise authority issued by the Secretary of State); Ga. Code Ann. § 36-76-3 (allowing a cable service or video service provider to elect negotiating either a local franchise agreement or a franchise agreement in accordance with state and federal law); Idaho Code Ann. § 50-3003 (requiring nonincumbent cable service providers to elect a franchise agreement negotiated with a local franchise authority or obtain a state-issued certificate of franchise authority); 220 Ill. Comp. Stat. Ann. § 5/21-301(a) (requiring a cable service provider to obtain either state-issued authorization or local franchise); Iowa Code § 477A.2 (requiring a cable service provider to obtain a certificate of franchise issued by the state or by a municipality).

⁸⁸ See, e.g., 2022 *Communications Marketplace Report*, FCC 22-103, 2022 WL 18110553, *79-96 and *100-04, paras. 212-61 and 276-90 (Dec. 30, 2022) (reporting on the video distribution trends and competition, including MVPDs' loss in video subscribers); *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Inquiry, 31 FCC Rcd 1610, 1610, para. 1 (2016) ("When Congress passed the 1992 Cable Act, the majority of American households had access to only one pay television service, and alternatives to that service were in their incipient stages. By contrast, consumers today can access video programming over multiple competing platforms, and the dominance of incumbent pay TV distributors has eroded.") (footnotes omitted).

⁸⁹ S&P Capital IQ, *U.S. Multichannel Industry Benchmarks*, <https://www.capitaliq.spglobal.com/web/client#industry/multichannelIndustryBenchmarks> (last visited Dec. 18, 2023) (listing cable video subscriptions for 2023 as 37,543,592 and total traditional multichannel video subscriptions for 2023 as 55,750,033).

⁹⁰ See *supra* para. 15.

⁹¹ 47 U.S.C. § 552(b) (listing the minimum areas to be covered by customer service requirements as: "(1) cable system office hours and telephone availability; (2) installations, outages, and service calls; and (3) communications between the cable operator and the subscriber (including standards governing bills and refunds)").

Congress which can be handled on a national level.”⁹² Nonetheless, as the Commission has previously determined, the statute’s inclusion of “at a minimum” indicates that the Commission may also establish standards in areas beyond those Congress specified.⁹³ We also ask commenting parties suggesting additional standards to address whether small cable systems should be excluded in whole or part from any such obligations. Consistent with congressional intent, we intend to ensure that the customer service standards remain both reasonable and sufficiently flexible to accommodate the broad range of cable operations.⁹⁴ Are there any best practices, standards or other requirements at the state or local level that should inform a national baseline rule? Commenters should provide specific examples of effective customer service requirements.

61. *Enforcement.* We seek comment on whether the Commission should have a role in the enforcement of any new customer service standards on cable operators it might adopt, concurrently with local franchise authorities.⁹⁵ The Commission previously determined that the statute did not give it a “specific enforcement role.”⁹⁶ Although the Commission at that time relied on the fact that the statute explicitly gave the local franchise authorities an enforcement role, there is nothing in section 632 or its legislative history that precludes the Commission’s ability to enforce its own standards.⁹⁷ Is there any reason why the Commission should not take enforcement action against cable operators itself rather than allow its customer service standards to continue to be enforced primarily by local franchise authorities? In 1993, the Commission observed that customer service requirements can be enforced “most efficiently and appropriately on a local level where such enforcement historically has occurred.”⁹⁸ Is this still true today? Do local authorities have adequate resources to effectively enforce these rules? To the extent the Commission were to enforce its own rules in individual cases, how could it best coordinate enforcement with local authorities? For example, should any enforcement role that the Commission assumes not be intended to preempt or replace local franchise enforcement, but rather to exercise concurrent jurisdiction?

62. We note that the Commission receives informal complaints from consumers about their cable providers through its consumer complaint center.⁹⁹ If the complaint concerns a billing or service issue, the Commission serves the complaint on the cable provider.¹⁰⁰ Would federal enforcement of the cable operator customer service standards help protect consumers in keeping with the goals of section

⁹² *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2897, para. 19.

⁹³ *See supra* para. 4.

⁹⁴ *See* 1992 Cable Act House Report at 105 (“Overall, these standards should be flexible in nature and should allow a local franchising authority to tailor the requirements to meet the needs of the local cable community.”).

⁹⁵ The Commission will enforce any customer service rules imposed on other service providers.

⁹⁶ *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2897, para. 19.

⁹⁷ We note, in this regard, that the Commission did retain enforcement authority to address “systemic abuses that undermine the statutory objectives.” *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2897, para. 19. Moreover, the Commission has broad enforcement authority under the Act. *See* 47 U.S.C. § 151 (directing the Commission to “execute and enforce the provisions of [the Communications] Act”); 47 U.S.C. § 312(b) (authorizing the Commission to order persons to cease and desist from violating any provision of the Act or the Commission’s rules); 47 U.S.C. § 503 (authorizing the Commission to assess a forfeiture penalty for failure to comply with any of the provisions of the Act, or any rule, regulation, or order issued by the Commission under this Act). We note that the Enforcement Bureau, in 2016, entered into a consent decree with Comcast terminating an investigation into its compliance with sections 623(f) and 632(c) regarding the practice of charging cable subscribers for services and equipment that they did not affirmatively request. *See In the Matter of Comcast Corporation*, Order, 31 FCC Rcd 11431, 11431, para. 2 (2016).

⁹⁸ *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2897, para 19.

⁹⁹ *Consumer Complaint Center*, Federal Communications Commission, <https://consumercomplaints.fcc.gov/hc/en-us> (last visited Apr. 11, 2024).

¹⁰⁰ *Id.* The provider has 30 days to respond in writing to the consumer once served with a complaint.

632? If so, what enforcement scheme should the Commission adopt? When the Commission last considered this issue, there were not yet any statewide franchises. Does their existence, some of which do not have enforcement authority, make it more important that the Commission should have the ability to enforce its own rules in individual cases?¹⁰¹ Commenters should explain in detail the legal and practical issues surrounding Commission enforcement of its customer service rules.

G. Waivers

63. We seek comment on how to accommodate service providers for which compliance with any updated customer service standards discussed herein would pose an undue hardship. When adopting the existing rule for cable systems, the Commission declined to adopt a flat exemption but, instead, encouraged small systems to seek a waiver of one or more of the customer service standards if any of the standards could not be accommodated “without an undue adverse impact to subscribers.”¹⁰² We seek comment on what our waiver policy should be for any service provider that finds they cannot comply with one or more of any new or modified standards the Commission may adopt.¹⁰³ For example, should we consider waiver requests based on hardship and consider size as one of the factors in balancing whether the hardship outweighs the negative effect that grant of a waiver would have on subscribers?¹⁰⁴ To the extent we consider size as a controlling factor for waivers, should we create a streamlined financial-hardship waiver for small systems, operators, or companies? If so, how should the Commission define small systems, operators, or companies in this context? In regard to cable service, should the Commission retain the definition of “small systems” used in the current rule’s implementing order (*i.e.*, 1,000 or fewer subscribers)? Or, would it be appropriate to define a “small system” for this purpose as a cable system that has fewer than 15,000 subscribers¹⁰⁵ and is not affiliated with a large operator, as the Commission has done in other contexts?¹⁰⁶ Should any granted waivers be limited to a specific number of

¹⁰¹ See Dana A. Scherer, *Potential Effect of FCC Rules on State and Local Video Franchising Authorities*, Congressional Research Service, at 9 (Jan. 9, 2020), <https://crsreports.congress.gov/product/pdf/R/R46077> (listing Alabama, Kentucky, Minnesota, Oklahoma, Pennsylvania, and Virginia as states that specify the terms and conditions of franchises, but have no agency to enforce those terms and conditions).

¹⁰² In this context, the Commission defined small systems as a cable system serving 1,000 or fewer subscribers. See *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2895, para. 11. To our knowledge, no operator has requested a waiver of any of the customer service standards currently included in the rule. We seek comment on this understanding.

¹⁰³ Under our general waiver authority, the Commission may waive the provisions of any of its rules for good cause shown. 47 CFR § 1.3; see also *id.* § 76.7 (establishing Part 76-specific procedures for waiver petitions).

¹⁰⁴ Other factors we could consider in our evaluation of a waiver request are: whether the waiver will affect a substantial number of subscribers; whether the entity has a plan to provide adequate customer service even if the entity’s plan does not align with the Commission’s customer service standards; whether the entity plans to eventually align with the Commission’s customer service standards; whether the company has support from the affected local franchise authority or authorities; whether the extenuating circumstances (entity size, financial status, etc.) make strict adherence to our rules extraordinarily difficult for the company; and whether the entity’s assertion of undue hardship is reasonable under the circumstances. Waiver of the Commission’s rules is subject to our general waiver standard. Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)). Generally, the Commission may waive any rule if there is good cause to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis. 47 CFR § 1.3. See *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁰⁵ See 47 CFR § 76.901(c) (defining a “small system” as a cable system serving 15,000 or fewer subscribers in the context of cable rate regulation).

¹⁰⁶ The Commission employed this definition to determine eligibility for the streamlined waiver process adopted as part of the Commission’s rules implementing the Commercial Advertisement Loudness Mitigation (CALM) Act.

(continued....)

years and subject to renewal? Finally, would there be any basis to exempt certain small systems, operators, or companies from any customer service requirements? If so, what would this basis be?

H. Legal Authority

64. We seek comment on our legal authority to pursue this inquiry including taking any potential measures under Title II or III to address the customer service practices discussed herein for cable operators, DBS, voice, and broadband service providers.¹⁰⁷ To the extent that any of the services discussed in this inquiry would fall outside of Title II or Title III, we seek comment on the Commission's authority to consider rules related to customer service practices with respect to those services and on the sources of such authority.

IV. PROCEDURAL MATTERS

65. *Ex Parte Rules.* The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.¹⁰⁹

66. *Filing of Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments

Implementation of the CALM Act, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17254, para. 54 n.234 (2011) (*CALM Act Implementation Order*). As noted by the *CALM Act Implementation Order*, the affiliation exclusion is consistent with our definition of small systems in the cable carriage context, which excludes cable systems that are affiliated with a large cable operator serving more than 10 percent of all MVPD subscribers. See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Fourth Report and Order, 23 FCC Rcd 13618, 13622, paras. 2, 12 (2008) (holding that "cable systems that have either 2,500 or fewer subscribers and are not affiliated with a large cable operator serving more than 10 percent of all MVPD customers . . . are exempt from the requirement to carry high definition versions of broadcast signals for three years following the [DTV] transition").

¹⁰⁷ See, e.g., 47 U.S.C. § 552(b) (granting the Commission broad authority to "establish standards by which cable operators may fulfill their customer service requirements"); 47 U.S.C. § 335(a) (authorizing the Commission to impose "public interest or other requirements for providing video programming" on DBS providers); 47 U.S.C. § 201(b) (providing broad authority with respect to interstate common carrier service to enact rules that are necessary to ensure that "[a]ll charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable. . . .").

¹⁰⁸ 47 CFR §§ 1.1200 *et seq.*

¹⁰⁹ 47 CFR § 1.49(f).

on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service mail. 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.

67. *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).

68. *Availability of Documents.* This *Notice* will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

69. *Additional Information.* For additional information on this proceeding, contact Richard D. Smith, Richard.Smith@fcc.gov or (717) 338-2797, Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

70. Accordingly, **IT IS ORDERED**, pursuant to sections 1-4, 201, 301, 303, 307, 316, 335(a), and 632(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 151-154, 201, 301, 303, 307, 316, 335(a), and 552(b) that this *Notice of Inquiry* is hereby **ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Strengthening Customer Service in the Communications Industry*, CG Docket No. 24-472, Notice of Inquiry

Hundreds of thousands of consumers reach out to the Federal Communications Commission each year. They file complaints because they have run into issues cancelling their service, are saddled with unexpected charges, are upset by unexplained outages, and are frustrated with billing issues they have not been able to resolve on their own. Many describe being stuck in “doom loops” that make it difficult to get a real person on the line to help with service that needs repair or to address charges they believe are a mistake.

We cannot ignore these complaints, especially not when we know that it is possible to do better. That is why today we start this inquiry. We seek to understand the state of customer service in communications—from top to bottom and inside and out. We want to help improve the customer experience, understand what tools we have to do so, and what gaps there may be in the law that prevent consumers from having the ability to resolve routine problems quickly, simply, and easily. I look forward to the record that develops in response.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Strengthening Customer Service in the Communications Industry*, CG Docket No. 24-472, Notice of Inquiry

The Biden-Harris Administration's communications policies are failing to deliver for the American people. The FCC's spectrum auction authority expired last year. The Administration's much-anticipated national spectrum strategy does not commit to freeing up even one megahertz of spectrum. Nor are there any new spectrum auctions on the horizon. On top of all of this, Vice President Harris has been leading the Administration's signature, \$42 billion plan to expand Internet infrastructure to millions of Americans for over 1,070 days now. Yet not a single home or business has been connected to the Internet through that program, and no construction projects are even under way.

It is imperative that we work together to get the federal government's communications policies back on track. And the sooner we get started on that work the better. We should recommit as an agency to the tried and true playbook of freeing up spectrum and eliminating regulatory barriers to deployment.

Instead, the Administration has started blaming others for its own record. Today's Notice of Inquiry is a case in point. A few months ago, the Administration issued a proclamation that pointed the finger at "price fixing," "junk fees," and "other unfair practices that harm consumers" as the root cause of the economic malaise that so many in this country are feeling. It then called on administrative agencies to hop to it and crack down on those practices.

Enter today's "customer service" Notice of Inquiry. It seeks comment on whether companies should allow callers to press "0" to reach an operator or some other number instead, whether customer service centers are located in convenient locations or not, whether the FCC should review and regulate the voluntary fees some customers may pay to skip service wait times, or whether AI technologies should be allowed to operate as an equivalent or alternative to live service representatives. And in many cases, the actions explored by the NOI would require the FCC to go well beyond the bounds of our authority under the Communications Act. Indeed, much of what the FCC considers here would fit more appropriately within the scope of the Federal Trade Commission's jurisdiction. In fact, the FTC has opened up a proceeding to look at these types of things already.

We should leave those cross-cutting consumer protection issues to the nation's lead consumer protection agency—the FTC. We should color within the lines drawn by the Communications Act. And we should focus our time and resources on policies that will help bring more Americans across the digital divide.

Because today's decision focuses instead on the Biden-Harris Administration's efforts to deflect attention away from the necessary course correction, I dissent.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Strengthening Customer Service in the Communications Industry*, CG Docket No. 24-472, Notice of Inquiry

Getting support from the companies you pay to provide you with services shouldn't be a chore. And yet we all know it can be. We've all been led down a maze of "press 1" options, when we just want to talk to a person. We've all had to rearrange our schedules to make sure we can be home during an unreasonably long service window. We've all struggled to cancel a service, and thought "this should be easier."

I'm proud that the FCC already has in place a number of regulations seeking to protect consumers against these problematic practices. For example, we require cable operators to maintain customer service phone lines with live representatives, and we limit the maximum appointment window that they can propose for service calls and installations. Today, we ask about the efficacy of these current requirements. Are they working the way they should? Are there updates we should consider? And should we extend these requirements, or similar ones, to the other services under our purview, including voice, broadband, and satellite TV providers? I want to thank my colleagues for including additional questions that I proposed about whether and how companies are deploying AI in customer service, including as a partial or full alternative to live customer service representatives.

Notably, today's item is in step with actions and proposals taken across the government. From the Federal Trade Commission, to the Department of Transportation, to the Department of Health and Human Services, to the Consumer Financial Protection Bureau, our government is focused on protecting and promoting American consumers. That's the way it should be.

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *Strengthening Customer Service in the Communications Industry*, CG Docket No. 24-472, Notice of Inquiry

When customer service is good, it is great. But when you encounter bad customer service, it can ruin your day. Consumers do not typically reach out to customer service until they need help, and when they reach out, they are hoping to encounter someone at the other end that can help them find a solution.

I am glad the FCC is adopting a Notice of Inquiry to learn about the current state of customer service in our industry. I have said that our agency does best when our work honors the people it serves, and this item is wholeheartedly in the service of people. I look forward to seeing the record develop.

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

In the Matter of	)	
	)	
Implementation of the National Suicide Hotline Act	)	WC Docket No. 18-336
of 2018	)	
	)	

**THIRD REPORT AND ORDER AND
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: October 17, 2024

Released: October 18, 2024

Comment Date: [30 days after date of publication in the *Federal Register*]

Reply Comment Date: [50 days after date of publication in the *Federal Register*]

By the Commission: Chairwoman Rosenworcel and Commissioners Carr and Starks issuing separate statements.

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APPENDIX D – INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. Today, we improve access to the critical, life-saving services provided by the 988 Suicide & Crisis Lifeline (988 Lifeline or Lifeline). We build off the success of the voluntary efforts by nationwide wireless providers to test and implement solutions to route wireless calls to 988 so callers are connected to geographically appropriate crisis centers based on the caller's location—a process known as georouting—by adopting a rule and setting deployment dates for all wireless providers to support georouting for wireless 988 calls. We also revise our existing routing rules for calls and texts terminating to the 988 platform to allow flexibility and technological improvements. We next adopt a *Third Further Notice of Proposed Rulemaking* in which we propose and seek comment on a requirement that covered text providers¹ support georouting to ensure that the 988 Lifeline may route covered 988 text messages² to the appropriate local crisis center. We also tentatively conclude that, at a minimum, wireless providers must support georouting for SMS text messages to 988.

2. The nation's mental health and substance use disorder community have urged the Commission to "take immediate, decisive action" to explicitly require wireless providers to implement georouting.³ They explain that communities across the country are making significant investments in building local resources to help people in crisis and that georouting will allow the 988 Lifeline to reach its full potential to "connect those in need to the care they need to get well and stay well after a crisis."⁴ This is critical as suicide continues to be a leading cause of death in the United States resulting in over 49,000 deaths in 2022, approximately one death every 11 minutes, according to the Centers for Disease Control and Prevention (CDC),⁵ and according to the administrator of the 988 Lifeline, Vibrant Emotional Health (Vibrant or Lifeline Administrator), for every one person who dies by suicide annually, 316 people

¹ 47 CFR § 52.201(c) ("Covered text provider" includes "all [Commercial Mobile Radio Service (CMRS)] providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.").

² *Id.* ("Covered 988 text messages" means "a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.").

³ Letter from National Alliance on Mental Illness (NAMI), American Academy of Pediatrics et al., to Xavier Becerra, Secretary, Department of Health and Human Services, and Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 18-336, at 2 (filed Mar. 20, 2024) (NAMI et al., Mar. 20, 2024 Letter); *see also* Letter from Michael McMenamin, Counsel, Winning Strategies Washington, to Marelene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1 (filed Sept. 27, 2024) (NAMI Sept. 27, 2024 *Ex Parte*) (noting that "NAMI expressed its appreciation for the Commission's expeditious progress" regarding georouting for 988).

⁴ NAMI et al., Mar. 20, 2024 Letter at 2. *See* Letter from Miriam E. Delphin-Rittmon, Ph.D., Assistant Secretary for Mental Health and Substance Use, to NAMI et al., WC Docket No. 18-336, at 1 (filed Aug. 5, 2024) (SAMHSA Aug. 5, 2024 Letter) ("SAMHSA agrees that the full potential of the 988 Suicide & Crisis Lifeline can only be realized once individuals in crisis receive supportive resources and, when necessary, emergency services from within the state or territory from where they are calling.").

⁵ Centers for Disease Control and Prevention, *Facts about Suicide*, <https://www.cdc.gov/suicide/facts/index.html> (last visited Oct. 10, 2024) ("In 2022, suicide was among the top 9 leading causes of death for people ages 10-64. Suicide was the second leading cause of death for people ages 10-14 and 25-34."); *see also* Centers for Disease Control and Prevention, *Suicide Data and Statistics*, https://www.cdc.gov/suicide/facts/data.html?CDC_AAref_Val=https://www.cdc.gov/suicide/suicide-data-statistics.html (last visited Oct. 10, 2024).

seriously consider suicide but do not take their life.⁶ Mental health experts tell us that people who reach out to the 988 Lifeline during a crisis need referrals to nearby follow-up care and services within their current communities.⁷

3. While the Commission has acted to make it easier for those in crisis to get help by designating and implementing 988 as the easy-to-remember, 3-digit dialing number for the 988 Lifeline,⁸ mental health and crisis counseling experts continue to emphasize that connecting callers in crisis with local crisis centers is important to connect life-saving services to those in need of public health and safety resources.⁹ To that end, we have worked with the U.S. Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA), the Lifeline Administrator, and other industry partners to improve the routing of wireless calls to 988. Through this cooperation, the three nationwide wireless providers stepped forward to voluntarily develop and implement 988 georouting solutions that are already improving mental health services by getting 988 calls to crisis counselors who can provide local support to callers in need. In this *Third Report and Order*, we codify georouting requirements for voice calls carried by all wireless providers¹⁰ and in the accompanying *Third Further Notice of Proposed Rulemaking*, we build on the progress of the georouting solution for wireless 988 voice calls by proposing to require covered text providers to support georouting for covered 988 text messages.

II. BACKGROUND

4. The 988 Suicide & Crisis Lifeline is a hotline that can be accessed by dialing 9-8-8 or by directly dialing a toll free access number (1-800-273-TALK). The 988 Lifeline consists of a national network of over 200 crisis centers that provide 24/7 confidential support for people experiencing emotional, suicidal, and substance use crises.¹¹ SAMHSA, a public health agency housed in the U.S.

⁶ See Press Release, Vibrant Emotional Health, New Study Proves Stories of Hope and Recovery Prevent Suicides, (Dec. 14, 2021), <https://www.vibrant.org/wp-content/uploads/2021/12/Logic-Niederkrötenhaler-Study-Press-Release-final-1.pdf>.

⁷ NAMI et al., Mar. 20, 2024 Letter at 2.

⁸ *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373, 7385-92, 7395-97, paras. 28-36 and 41-45 (2020) (*988 Report and Order*); *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Second Report and Order, 36 FCC Rcd 16901, 16903, para. 2 (2021) (*Text-to-988 Second Report and Order*).

⁹ See *Implementation of the National Suicide Hotline Act of 2018*, WC Docket 18-336, Second Further Notice of Proposed Rulemaking, FCC 24-45, 2024 WL 1905193, at *5, para. 14 (rel. Apr. 26, 2024) (*988 Georouting Second Further Notice*); see also *infra* para. 14.

¹⁰ In this *Third Report and Order* and *Third Further Notice of Proposed Rulemaking*, we use “wireless provider” to mean Commercial Mobile Radio Service (CMRS) provider as defined in 47 CFR § 9.3. This includes mobile virtual network operators (MVNOs). See *Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform Modernization; Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order, FCC 23-96, para. 17 n.46 (rel. Nov. 16, 2023) (citing *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425, para. 37 (1994)).

¹¹ See 988 Suicide & Crisis Lifeline, *About the Lifeline*, <https://988lifeline.org/about/> (last visited Oct. 10, 2024) (“The 988 Suicide & Crisis Lifeline provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week, across the United States.”); SAMHSA, *988 Key Messages*, <https://www.samhsa.gov/find-help/988/key-messages> (last visited Oct. 10, 2024); SAMHSA, *Frequently Asked Questions, What is 988?*, <https://www.samhsa.gov/find-help/988/faqs#about-988> (last visited Oct. 10, 2024) (“[O]ffers 24/7 call, text and chat access to trained crisis counselors who can help people experiencing suicidal, substance use, and/or mental health crisis, or any other kind of emotional distress. People can also call, text or chat 988 if they are worried about a loved one who may need crisis support.”).

Department of Health and Human Services, oversees the 988 Lifeline.¹² Vibrant, a New York-based mental health non-profit, is the current administrator of the 988 Lifeline pursuant to the terms of a grant awarded by SAMHSA.¹³

5. The 988 Lifeline provides call, text, and chat services in English and Spanish,¹⁴ and interpreter services are available for more than 240 languages.¹⁵ Help-seekers may reach a Spanish language line by pressing “2” after calling the Lifeline or texting “Ayuda” to 988 and specialized services are available for LGBTQI+ youth and young adults by pressing “3” after calling the Lifeline or texting “PRIDE” to 988.¹⁶ The Lifeline also offers videophone services for deaf or hard of hearing American Sign Language (ASL) users.¹⁷ Calls and covered text messages¹⁸ to the 988 Lifeline are connected to trained counselors who “assess callers for suicidal risk, provide crisis counseling, crisis intervention, engage emergency services when necessary, and offer referrals to mental health and/or substance use services.”¹⁹ The Lifeline has received over 23 million contacts from people in distress looking for support between its inception in 2005 and 2021.²⁰ Since the nationwide availability of the 3-digit 988 code began in July 2022, the 988 Lifeline has received over 10 million calls, texts, and chats.²¹

6. *988 Calls Routed by Area Code.* The original design of the 988 Lifeline system routes 988 calls to a crisis center based on the caller’s area code and exchange.²² This presents a challenge for the 988 system—as the majority of Americans rely on wireless phones to place calls²³—when a caller

¹² See SAMHSA, *Frequently Asked Questions, Are 988/the Lifeline/the National Suicide Prevention Lifeline/Hotline the same?*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Oct. 10, 2024).

¹³ See Press Release, SAMHSA Awards Vibrant Emotional Health the Grant to Administer 988 Dialing Code for the National Suicide Prevention Lifeline (rel. June 16, 2021), <https://www.samhsa.gov/newsroom/press-announcements/202106161430>; see also SAMHSA, *Cooperative Agreement for National Suicide Prevention and Disaster Helpline*, https://www.samhsa.gov/grants/grants-dashboard?F%5B0%5D=by_award_fy%3A2021&f%5B1%5D=by_nofo_number%3ASM-21-005#awards-tab (last visited Oct. 10, 2024).

¹⁴ 988 Suicide & Crisis Lifeline, *988 Lifeline Get Help*, <https://988lifeline.org/get-help/> (“988 Lifeline voice, text, and chat options are offered in Spanish.”) (last visited Oct. 10, 2024).

¹⁵ 988 Suicide & Crisis Lifeline, *Calling the 988 Lifeline, FAQ: Is the 988 Lifeline available in other languages for non-English speakers?*, <https://988lifeline.org/faq/> (last visited Oct. 10, 2024).

¹⁶ *Id.*; *Calling the 988 Lifeline, FAQ: Are there specialized services for LGBTQI+ youth who reach out to 988?*, <https://988lifeline.org/faq/> (last visited Oct. 10, 2024).

¹⁷ 988 Suicide & Crisis Lifeline, *Deaf, Hard of Hearing, Hearing Loss*, <https://988lifeline.org/help-yourself/for-deaf-hard-of-hearing/> (last visited Oct. 10, 2024).

¹⁸ A “covered 988 text message” means a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.” 47 CFR § 52.201(c)(2).

¹⁹ *The Substance Abuse and Mental Health Services Administration Report to the Federal Communications Commission*, WC Docket No. 18-336, CC Docket No. 92-105, at 5 (Feb. 7, 2019).

²⁰ See *988 Georouting Second Further Notice at *3*, para. 5. The 988 Lifeline was known as the National Suicide Prevention Lifeline when it launched in 2005 with the number 1-800-273-8255 (TALK). See 988 Suicide & Crisis Lifeline, *About 988*, <https://988lifeline.org/about/> (last visited Oct. 10, 2024).

²¹ See Vibrant Emotional Health, *Celebrating 988 Day*, <https://www.vibrant.org/celebrating-988-day/> (last visited Sept. 18, 2024); U.S. Department of Health and Human Services, *Now in Its Second Year, 988 Lifeline Continues to Help Millions of People* (July 16, 2024), <https://www.hhs.gov/about/news/2024/07/16/second-year-988-lifeline-continues-help-millions-people.html>.

²² See SAMHSA, *988 Frequently Asked Questions, FAQs About Privacy, Call Routing, and Network Functioning*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Oct. 10, 2024).

²³ CTIA estimates that the total number of wireless subscriber connections increased from approximately 207 million in 2005 to 558 million in 2023. See CTIA, *Summary of CTIA’s Annual Wireless Industry Survey*,

(continued....)

using a wireless phone dials 988 from outside the area code associated with that phone. For example, if the wireless caller has a Virginia 703 area code, but lives or is temporarily located in California, the caller will be routed to a crisis center in Virginia rather than California. Mental health and crisis counseling experts have opined that connecting callers in crisis with local crisis centers is important to connect life-saving services to those in need of public health and safety resources and enable them to speak with local counselors who may be more familiar with cultural issues or community stressors in the caller's area.²⁴

7. *Efforts to Improve Routing from Wireless Phones.* Georouting refers to technical solutions for directing calls based on a geographic location for the origin of the call without transmitting information about the caller's precise location.²⁵ For example, calls to various N11 services, such as 211, 311, 511, and 811, are routed to call centers based on the geographic location of the cell tower that *originates* the call.²⁶ This more sophisticated routing permits, among other benefits, local mental health experts to better assess and treat callers in crisis.

8. Understanding the importance of improving 988 routing, the Commission has taken several steps to study and implement georouting for wireless 988 calls. In its April 15, 2021, Report to Congress, the Wireline Competition Bureau identified an important distinction in how a caller's location can impact not only dispatchable location but also the routing path of the call to the most geographically appropriate crisis center (i.e., georouting).²⁷ On May 24, 2022, the Commission, in coordination with HHS and the VA, convened a forum in which Intrado,²⁸ a provider of public safety-related software

(Continued from previous page)

<https://api.ctia.org/wp-content/uploads/2022/09/Summary-of-CTIAs-Wireless-Industry-Survey-2022.pdf> (last visited Oct. 10, 2024) (noting the estimated number of wireless connections for 2005); CTIA, *2024 Annual Survey*, at 4, <https://api.ctia.org/wp-content/uploads/2024/09/2024-Annual-Survey-Highlights.pdf> (last visited Oct. 10, 2024) (noting the estimated number of wireless connections for 2023). See also Pew Research Center, *Mobile Fact Sheet* (Jan. 31, 2024), <https://www.pewresearch.org/internet/fact-sheet/mobile/> (noting “[t]he vast majority of Americans – 97% – now own a cellphone of some kind”).

²⁴ See *988 Georouting Second Further Notice* at *1, para. 2 & n.10; see also *infra* para. 14.

²⁵ See SAMHSA, 988 Crisis Systems Response Training and Technical Assistance Center: Crisis Community Collaboration at 19-23 (Jan. 16, 2024), <https://www.samhsa.gov/sites/default/files/csr-ttac-988-3c-session-01162024.pdf> (“Geo-routing is a way of directing phone calls locally without including the precise location information in the transferred call data. If used, it would mean that when a person calls the 988 Lifeline, their call would be connected to a crisis center near their physical location. With geo-routing, the routing and service providers would not receive detailed information about the exact locations of callers.”); see also Vibrant Emotional Health Reply Comments, WC Docket No. 18-336, at 4 (rec. Jan. 11, 2021) (Vibrant 988 Geolocation Reply) (stating that “[c]oarse location’ [] could be used for routing calls to local centers by determining the nearest cell phone tower to the caller, and connecting them to the nearest center to the cell tower. This could be used routinely without divulging the caller’s precise location information and maintaining caller privacy.”).

²⁶ See *988 Georouting Second Further Notice* at *4, para. 9 & n.40.

²⁷ See FCC, 988 Geolocation Report – National Suicide Hotline Designation Act of 2020 at 14 (2021), <https://docs.fcc.gov/public/attachments/DOC-371709A1.pdf> (988 Geolocation Report) (distinguishing the use of location information to route calls to the nearest crisis center from locating individuals for emergency dispatch); see also 47 CFR § 9.3 (defining “dispatchable location” as “[a] location delivered to the [Public Safety Answering Point (PSAP)] with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party”).

²⁸ FCC, 988 Geolocation Forum (May 24, 2022), <https://www.fcc.gov/news-events/events/2022/05/forum-geolocation-988>. At the time of the May 2022 Forum, Intrado Corporation was a subsidiary of West Technology Group. For a full discussion of the Intrado organization, see *988 Georouting Second Further Notice* at *4, para. 10, n.45.

systems and services, proposed a cell-based georouting solution to connect calls to 988 with local crisis call centers irrespective of a wireless phone's area code.²⁹

9. Following the forum, Commission staff, SAMHSA, and the Lifeline Administrator engaged in regular discussions regarding the proposed Intrado solution and other efforts that may lead to more accurate routing of wireless calls to the 988 Lifeline. In June 2023, SAMHSA, the Lifeline Administrator, Intrado Life & Safety, and a wireless provider began a proof of concept to test a modified version of the cell-based georouting solution in a lab environment, i.e., without using any actual caller data from live calls, which was completed in the summer of 2023.³⁰ Building on that success, on September 28, 2023, Chairwoman Rosenworcel and HHS Assistant Secretary for Mental Health and Substance Use Dr. Miriam Delphin-Rittmon sent letters to AT&T, T-Mobile USA, Inc. (T-Mobile), Verizon, CTIA, Competitive Carriers Association (CCA), and Rural Wireless Association (RWA) urging wireless providers to take the necessary steps to identify and develop a 988 georouting solution that could be deployed in their wireless networks.³¹ Since the September 28, 2023 letters, the nationwide wireless providers—AT&T, T-Mobile, and Verizon—have worked diligently with SAMHSA, the Lifeline Administrator, and Commission staff to develop technical solutions that improve routing of wireless 988 calls to geographically appropriate crisis centers while safeguarding the privacy of a caller's location. As a result of this collaboration, the nationwide carriers have implemented, or are in the process of implementing, georouting for wireless calls.³²

²⁹ Intrado, 988 Geolocation Forum Presentation at 103 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>.

³⁰ See 988 Georouting Second Further Notice at *4, para. 11; Press Release, Intrado Life & Safety, Intrado's 988 Innovation Ensures Callers in Crisis Reach Local Mental Health Support (Oct. 18, 2023), <https://www.intrado.com/news-releases/intrados-988-innovation-ensures-callers-in-crisis-reach-local-mental-health-support> (Intrado Life & Safety Press Release); see also SAMHSA, 988 Crisis Systems Response Training and Technical Assistance Center: Crisis Community Collaboration at 20 (Jan. 16, 2024), <https://www.samhsa.gov/sites/default/files/csr-ttac-988-3c-session-01162024.pdf>.

³¹ See Press Release, FCC, Chairwoman Calls on Wireless Industry and Related Associations to Explore 988 Routing Solutions (Sept. 28, 2023), <https://docs.fcc.gov/public/attachments/DOC-397339A1.pdf>; Letter from Jessica Rosenworcel, Chairwoman, FCC, to John Stankey, Chief Executive Officer, AT&T, Inc., et al. (Sept. 28, 2023); Letter from Jessica Rosenworcel, Chairwoman, FCC, to Tim Donovan, President & CEO, Competitive Carriers Association, et al. (Sept. 28, 2023); Letter from Jessica Rosenworcel, Chairwoman, FCC, to Meredith Attwell Baker, President and CEO, CTIA, et al. (Sept. 28, 2023); Letter from Jessica Rosenworcel, Chairwoman, FCC, to Jake Baldwin, President, Rural Wireless Association, et al. (Sept. 28, 2023); Letter from Jessica Rosenworcel, Chairwoman, FCC, to Mike Sievert, President and Chief Executive Officer, T-Mobile, et al. (Sept. 28, 2023); Letter from Jessica Rosenworcel, Chairwoman, FCC, to Hans Vestberg, Chairman and Chief Executive Officer, Verizon, et al. (Sept. 28, 2023).

³² See, e.g., Letter from Leighton T. Brown, Counsel, CX360, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1 (filed Sept. 26, 2024) (CX360 Sept. 26, 2024 *Ex Parte*) (noting that a georouting “solution developed by CX360 in collaboration with [the Lifeline Administrator] and all three nationwide wireless service providers . . . went live for approximately 235 million wireless telephone customers on September 17, 2024, and is expected to go live for another 115 million customers before the end of 2024”); Press Release, SAMHSA, Wireless Calls to 988 Get a More Localized Response with Georouting (Sept. 25, 2024), <https://www.samhsa.gov/newsroom/press-announcements/20240925/wireless-calls-988-more-localized-response-georouting> (noting that the 988 Lifeline “announced that the process to start routing cellular phone calls to 988 contact centers based on the caller's approximate location, versus by area code – known as ‘georouting’ – began last week with two major U.S. wireless carriers that combined make up about half of all wireless calls to 988”); Press Release, T-Mobile, Customers Calling 988 for Mental Health Support Will Now Be Routed to Local Crisis Centers (Sept. 25, 2024), <https://www.t-mobile.com/news/network/988-georouting> (T-Mobile Sept. 25, 2024 Press Release) (stating that “[a]s of last week, T-Mobile customers who call the [988 Lifeline] will have their calls routed to crisis centers close to their actual location, directly connecting them with counselors who are familiar with their local community's resources and services”); see also CTIA Comments at 4 (stating that the “nationwide wireless

(continued....)

10. *988 Georouting Second Further Notice of Proposed Rulemaking*. On April 25, 2024, we adopted a *Second Further Notice of Proposed Rulemaking* proposing to adopt rules requiring wireless providers to implement a georouting solution for calls to the 988 Lifeline.³³ Acknowledging the work of SAMHSA and the Lifeline Administrator and building on that effort, we sought comment on a variety of issues related to implementing a georouting solution for the 988 Lifeline, including technical specifications and limitations, required routing data and transmission methods, necessary infrastructure and system changes or upgrades, testing requirements, and timelines for deployment.³⁴ We received many comments and ex partes from a wide range of stakeholders including the mental health community, industry, and state and local government entities. Most significantly, we received over 2,700 submissions from individual people urging us to strengthen the 988 Lifeline by adopting a georouting rule, some of whom say that they have personally experienced suicidal ideation or lost loved ones to suicide.³⁵

III. DISCUSSION

11. In this *Third Report and Order*, and consistent with our proposal in the *988 Georouting Second Further Notice*, we adopt a rule that would require wireless providers to implement a georouting solution for calls to the 988 Lifeline.³⁶ We find that a georouting mandate will strengthen and improve access to the critical benefits of the 988 Lifeline for callers in crisis. We then define the type of location data that qualifies as georouting data. Next, we require nationwide and non-nationwide Commercial Mobile Radio Service (CMRS) providers to have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format that is compatible with the 988 Lifeline's routing platform to allow routing of calls by generating location data using cell-based location technology. We require CMRS providers to aggregate the cell-based location data to a level that will not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset, thereby protecting the privacy of the caller.

12. To give wireless providers flexibility for this mandate, we do not specify a particular method for aggregating the location data and allow providers to use technically feasible options for meeting this requirement to the extent that they are compatible with the systems used by the 988 Lifeline. This approach is consistent with solutions deployed or being deployed by the three nationwide CMRS providers. We then establish an implementation timeline for georouting calls to the 988 Lifeline of 30 days following the effective date of the rule for nationwide CMRS providers, which is supported by the nationwide providers' representations that they will have already deployed compliant 988 georouting solutions by the compliance deadline. This action will ensure that as soon as possible, the vast majority of callers to the 988 Lifeline in the United States have access to support and resources most closely connected to their location with appropriate privacy safeguards. We expect that non-nationwide CMRS

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providers AT&T, T-Mobile, and Verizon have achieved consensus with the Lifeline Administrator, Vibrant, on the contours of georouting solutions and are working to implement them as quickly as practicable"); T-Mobile Comments at 1, 4 (noting that T-Mobile's georouting solution was "expected to be operational shortly after the close of the reply comment period" and implemented in August 2024); AT&T Reply at 3 (noting that AT&T expected "within six months major wireless carriers to be able to georoute calls to the 988 Lifeline for handling by local crisis centers").

³³ *988 Georouting Second Further Notice* at *5, paras. 14-31.

³⁴ *Id.*

³⁵ See, e.g., Jamie Latshaw Comments at 1 (Express); Andrew Elliot Comments at 1 (Express). The express filings are available on the Commission's Electronic Comment Filing System (ECFS) in WC Docket No. 18-336. Initial comments on the *988 Georouting Second Further Notice* were due on or before June 28, 2024, and reply comments were due on or before July 29, 2024. *Wireline Competition Bureau Announces Comment and Reply Comment Dates for 988 Georouting Second Further Notice of Proposed Rulemaking*, WC Docket No. 18-336, Public Notice, DA 24-501 (WCB May 29, 2024).

³⁶ *988 Georouting Second Further Notice* at *5, para. 13.

providers will be able to leverage the solutions implemented by the nationwide providers, and for that reason, we require non-nationwide providers to implement georouting 24 months after the effective date of the rule. Finally, we revise our existing 988 voice and texting rules to allow for routing to the national suicide prevention and mental health crisis hotline system maintained by SAMHSA and the U.S. Department of Veterans Affairs (VA)³⁷ without need for translation to the toll free number. Overall, we find that the reasonable and flexible georouting mandate and rule revisions we adopt today will provide certainty that 988 callers will be connected to the crisis center nearest to them.

A. Georouting Will Improve Access and Efficiency of the 988 Lifeline

13. Under our current rules, calls to 988 must first be routed to the existing toll free ten-digit access number for the 988 Lifeline,³⁸ from which they are then routed to one of over 200 regional crisis centers based on the area code and exchange of the caller's telephone number supplied by the originating service provider.³⁹ As technology trends have shifted from landline phones to mobile phones,⁴⁰ many callers now rely on wireless devices with area codes that may not correspond to their physical locations when contacting the 988 Lifeline,⁴¹ complicating their access to vital local services. In the 988 *Georouting Second Further Notice*, we explained that the majority of calls placed to the 988 Lifeline are from wireless phones, and the area codes of those phones often do not correspond to the location of the caller.⁴² While 988 call takers can provide support regardless of a caller's location, they may not be able

³⁷ National Suicide Hotline Designation Act of 2020, Pub. L. 116-172, § 3(a), 134 Stat. 832 (codified at 47 U.S.C. § 251(e)(4)) (designating 988 "as the universal telephone number within the United States for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline maintained by the Assistant Secretary for Mental Health and Substance Use . . . and through the Veterans Crisis Line maintained by the Secretary of Veterans Affairs").

³⁸ See 47 CFR § 52.200(b). The Commission's rules also require covered 988 text messages to be routed to the 988 Lifeline's current toll free ten-digit access number. *Id.* § 52.201(a). The Wireline Competition Bureau granted a waiver to allow covered text providers to route covered 988 text messages to the 988 Lifeline using the short code protocol without translation to the Lifeline's current toll free access number. This allows return texts from the 988 Lifeline to appear on consumer devices as coming from 988 rather than 1-800-273-TALK. *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, 37 FCC Rcd 6060 (WCB 2022).

³⁹ A U.S. telephone number consists of three basic parts (a three-digit Numbering Plan Area, known as the area code (NPA); a three-digit Central Office code (NXX); and a four-digit line number). See *988 Report and Order*, 35 FCC Rcd at 7384, para. 23; Vibrant 988 Geolocation Reply at 1 (explaining that currently "the Lifeline handles all call routing to individual centers within the network utilizing Lifeline's own routing database keyed on area code and exchange"); SAMHSA, 988 Suicide & Crisis Lifeline Geolocation Needs, 988 Geolocation Forum Presentation at 37 (May 24, 2022); Vibrant Emotional Health, Geolocation and 988: The Need for Location Routing and Rapid Response to Persons at Imminent Risk of Suicide, 988 Geolocation Forum Presentation at 42-43 (May 24, 2022); Vibrant Emotional Health, Lifeline Technology and Location Data Usage, 988 Geolocation Forum Presentation at 95-96 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>. The Commission has had no role in establishing, maintaining, or operating the 988 Lifeline's routing system or the facilities and systems that enable it, and is not a party to any agreement that the Lifeline Administrator and/or SAMHSA has entered to establish, structure, operate, govern, or fund the system.

⁴⁰ *Supra* note. 23.

⁴¹ See SAMHSA Aug. 5, 2024 Letter at 1 (noting that "[w]hile callers today receive a localized response based on their phone's area code, many people rely on wireless phones with area codes that do not match their physical locations").

⁴² 988 *Georouting Second Further Notice* at *5, para. 14. The Lifeline Administrator estimates that 80% of calls placed to the 988 Lifeline are from wireless phones. Vibrant Emotional Health Comments, WC Docket No. 18-336, at 2 (rec. Dec. 21, 2020) (Vibrant 988 Geolocation Comments). See also Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1-2 (filed Apr. 17, 2024) (CTIA Apr. 17, 2024 *Ex Parte*) ("With approximately 80% of calls to 988 made from wireless phones, there (continued....)

to connect callers in crisis to local resources.⁴³ We proposed to adopt a rule that would require wireless providers to implement one or more georouting solutions for calls to the 988 Lifeline in order to ensure more accurate routing of calls.⁴⁴ After reviewing the record in this proceeding, we find that requiring wireless providers to support georouting for wireless 988 calls is essential to improve the public's access to the 988 Lifeline's critical mental health crisis and suicide prevention services.

14. The record demonstrates near-unanimous agreement for the assertion that there is a need to improve routing of wireless 988 calls to help ensure that callers are routed to geographically appropriate crisis centers.⁴⁵ Commenters, including industry and mental health advocates, agree that georouting for 988 wireless calls will improve access to critical local resources⁴⁶ and help connect callers

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is now a growing desire to enable the Lifeline Administrator to route calls to a crisis center that corresponds with the location of the caller, without providing the caller's *precise* location.”).

⁴³ 988 Georouting Second Further Notice at *3, para. 7. See SAMHSA, 988 Frequently Asked Questions, How do calls to 988 get routed?, <https://www.samhsa.gov/find-help/988/faqs> (last visited Oct. 10, 2024); NAMI et al., Mar. 20, 2024 Letter at 2.

⁴⁴ 988 Georouting Second Further Notice at *5, paras. 14-15.

⁴⁵ See e.g., American Foundation for Suicide Prevention Comments at 2 (AFSP Comments); California Office of Emergency Services Comments at 3 (Cal OES Comments); Centerstone Comments at 2; Comtech Comments at 3; CTIA Comments at 3; CX360 Comments at 2; Lisa Wong Comments at 2 (filed on behalf of Los Angeles County Department of Mental Health) (LA County DOMH Comments); John Draper Comments at 1; Massachusetts Association for Mental Health, Inc. Comments at 1 (MAMH Comments); Mental Health America Comments at 1-2 (MHA Comments); Michigan State 911 Committee Comments at 1; Natasha Corkins, et al. Comments at 1 (filed on behalf of Burrell Behavioral Health) (Burrell Behavioral Health Comments); National Association of Counties Comments at 1 (NACO Comments); National Alliance on Mental Illness Comments at 1-2 (NAMI Comments); National Council for Mental Wellbeing Comments at 4 (NCMW Comments); New York Office of Mental Health Comments at 1 (NY OMH Comments); Northwest Portland Area Indian Health Board Comments at 1 (NPAIHB Comments); Pew Charitable Trusts Comments at 1 (Pew Comments); Pyramid Healthcare, Inc. Comments at 1 (Pyramid Comments); Rural Wireless Association, Inc. Comments at 2 (RWA Comments); Stephen Goins Comments at 1 (filed on behalf of Northwest Human Services) (NWHHS Comments); The LegalMind Society Comments at 2-3 (LegalMind Society Comments); T-Mobile Comments at 1; Vibrant Emotional Health Comments at 3 (Vibrant Comments); Vibrant Emotional Health – Mental Health Liaison Group Comments at 1-2 (Vibrant MHLG Comments); Alliance for Telecommunications Industry Solutions Reply at 3 (ATIS Reply); AT&T Reply at 1-2; Competitive Carriers Association Reply at 1 (CCA Reply); Electronic Privacy Information Center Reply at 1 (EPIC Reply); Intrado Life & Safety, Inc. Reply at 1 (Intrado Life & Safety Reply); National Association of State 911 Administrators Reply at 1 (NASNA Reply); Southern Communications Services, Inc. Reply at 1 (Southern Line Reply).

⁴⁶ See, e.g., AFSP Comments at 2 (emphasizing that georouting for 988 will connect callers “with crisis centers that can provide local, appropriate, and supportive information or resources tailored to their specific needs”); Lucinda Mercer Comments at 1 (stating that georouting will “help ensure that every 988 call center is responding to callers who are more local”); Michigan State 911 Committee Comments at 1 (agreeing that georouting for 988 calls will “connect[] callers with local resources that are available (which vary county by county)”); John Draper Comments at 3 (supporting georouting for 988 calls “on the basis that it promotes efficient access to optimally appropriate local community care for callers in crisis”); NAMI Comments at 1-2 (stating that georouting for 988 calls “will help ensure that callers in crisis are connected to the critical lifesaving services nearest to their location”); NY OMH Comments at 1 (asserting that “geo-routing, or vicinity-based routing, will ensure that New Yorkers can access mental health support as quickly and safely as possible from 988 Contact Centers proficient in local resources”); Pew Comments at 1 (stating that georouting “will help increase access to local care for people experiencing a behavioral health emergency”); Pyramid Comments at 1 (“Implementing georouting for 988 will connect individuals to the closest call center based on geographic location rather than area code.”); Reimagine Crisis Response Comments at 1 (“Requiring wireless carriers to use a georouting solution for the 988 Lifeline, while protecting confidentiality and personal information, is essential to ensuring that callers have access to critical services and support in their community.”); NCMW Comments at 1 (stating that georouting for 988 calls “protects caller confidentiality while also ensuring the caller is connected to the appropriate local resources available to better meet

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to counselors who may be more knowledgeable about unique community stressors and other regional, cultural, and economic factors impacting callers in distress.⁴⁷ As several mental health advocates emphasize, access to local resources and support can mean the “difference between life and death for hundreds of thousands of individuals annually.”⁴⁸ Commenters also highlight that georouting for 988 calls will improve access to referral and follow-up services that may reduce the risk of future mental health crises and suicidality.⁴⁹ For example, Mental Health America states that connecting callers to “support based on their physical location can enable crisis contact centers to provide connections to local resources and follow-up services, reducing the risk of suicidality for individuals in crisis.”⁵⁰ Several commenters also assert that follow-up services are “more meaningful when a caller is connected to local crisis support.”⁵¹

15. Mental health and crisis counselors also emphasize that connecting callers with local crisis centers may avert unnecessary dispatch of emergency services and law enforcement.⁵² For

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their needs”); RWA Comments at 2 (stating that having a georouting solution that will “assist crisis centers in more precisely locating a 988 caller’s location, to potentially provide life-saving resources, serves the public interest”); Vibrant MHLG Comments at 1 (asserting that georouting will enable “individuals to be directed to the crisis contact center closest to them enabling vital connections to local crisis resources”); *see also* CTIA Reply at 1 (supporting this conclusion); CX360 Reply at 2 (same).

⁴⁷ *See, e.g.*, CX360 Comments at 6 (supporting georouting for wireless 988 calls and “efforts to ensure help seekers are connected to local resources who understand local stressors”); MHA Comments at 1 (supporting georouting for wireless 988 calls and emphasizing “the importance of receiving care that is specific to the community from which the call is made”); NAMI Comments at 2 (“Routing individuals in crisis to local crisis centers allows counselors to respond to regional, cultural and economic factors as well as to a community’s unique stressors.”); NCMW Comments at 1 (agreeing that georouting for 988 calls enables “counselors to respond to regional cultural and economic factors as well as a community’s unique stressors”); NWHS Comments at 1 (explaining that 988 callers value support from “members of their own community who are familiar with resources and the regional culture”); Trevor Project Comments at 2 (agreeing that georouting for 988 calls “allows counselors to respond to regional cultural and economic factors as well as a community’s unique stressors”); Pew Comments at 1 (“This update will allow call takers to quickly provide connections to local service providers who have a better understanding of local resources, geographical barriers, and cultural considerations, while avoiding any unnecessary delays in emergency response times.”); Vibrant Comments at 3 (agreeing that “[c]onnecting individuals in crisis with local crisis contact centers is important to . . . enable them to speak with crisis counselors who may be more familiar with cultural issues or community stressors in the individual’s area”); *see also* AT&T Reply at 1-2 (supporting this conclusion).

⁴⁸ *See, e.g.*, Burrell Behavioral Health Comments at 1; FirstLink North Dakota Comments at 1; Elicia Berryhill Comments at 1 (filed on behalf of Heartline, Inc.) (Heartline Comments); MHA Comments at 1; NWHS Comments at 1; Tabatha Stafford Comments at 1; Mandy Fauble, et al. Comments at 1 (filed on behalf of UPMC Western Behavioral Health) (UPMC Comments); Levi Van Dyke Comments at 1 (filed on behalf of Volunteers of America Western Washington) (VOAWW Comments).

⁴⁹ *See, e.g.*, NAMI Comments at 2 (emphasizing that access to local resources “reduces the future risk of suicidality and future crisis,” as well as “the unnecessary use of emergency services and law enforcement”); Trevor Project Comments at 2 (supporting that access to local resources averts “unnecessary dispatch of emergency services and law enforcement”); Burrell Behavioral Health Comments at 1 (asserting that “local crisis contact centers are able to provide connections to local resources and services, as well as follow-up services, reducing the risk of suicidality for individuals in crisis”); *see also* FirstLink North Dakota Comments at 1; Heartline Comments at 1; MHA Comments at 2; NWHS Comments at 1; Reimagine Crisis Response Comments at 2; Tabatha Stafford Comments at 1; UPMC Comments at 2; Vibrant MHLG Comments at 1-2; VOAWW Comments at 1 (all supporting the same conclusion).

⁵⁰ MHA Comments at 2.

⁵¹ *See, e.g.*, Burrell Behavioral Health Comments at 1; FirstLink North Dakota Comments at 1; Heartline Comments at 1; NWHS Comments at 1; Tabatha Stafford Comments at 1; UPMC Comments at 2; VOAWW Comments at 1.

⁵² *See, e.g.*, CSAC Comments at 1 (stating that “[a] caller’s contact with the local crisis call center may also lessen the need for emergency health care services and/or the involvement of law enforcement”); Reimagine Crisis

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example, Mental Health America states that “the ability for 988 callers to be routed to local crisis centers allows counselors to better respond to unique factors and situations, which may also help avoid unnecessary use of emergency services and law enforcement.”⁵³ Similarly, as the current Lifeline Administrator explains, connecting callers to trained counselors who can offer “emotional support and local care resources” can avert “unnecessary use of emergency services and law enforcement,” which is paramount.⁵⁴ Moreover, many commenters assert that implementing georouting solutions for wireless 988 calls will enhance the ability of crisis centers to respond effectively to emergency situations and facilitate the dispatch of mobile crisis services.⁵⁵

16. The record also demonstrates that a georouting mandate for wireless 988 calls will advance digital equity by helping to ensure that at-risk populations can more easily access resources in their communities.⁵⁶ As the Lifeline Administrator explains, certain populations with a higher risk of suicide are disproportionately impacted by the Lifeline’s area code-based routing system, including older adults, youth and young adults, non-Hispanic Black, American Indian, and Alaska Native communities.⁵⁷

B. Georouting Mandate for Wireless 988 Voice Calls

17. Based on the record presented and in furtherance of the policy goals articulated above, we require nationwide and non-nationwide CMRS providers to implement georouting solutions for calls to the 988 Lifeline. Specifically, we require that all CMRS providers have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format compatible with the Lifeline’s routing platform, to allow routing of 988 calls by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the 988 call is initiated.⁵⁸ We further require that all CMRS providers must provide georouting data, when available, with 988 calls to

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Response Comments at 2 (“Implementing georouting will help fulfill the vision of 988 to reduce the risk of suicidality, future crises, and unnecessary use of emergency services and law enforcement.”).

⁵³ MHA Comments at 2.

⁵⁴ Vibrant Comments at 3-4.

⁵⁵ See Michigan State 911 Committee Comments at 1 (stating that georouting for 988 calls “provides emergency services a more narrowed area to focus on when trying to locate a caller in need of life-saving response”); John Draper Comments at 2 (stating that “a local center will have greater access to mobile crisis team response capabilities and the correct 911 center nearest to a person at imminent risk in their community”); LA County DOMH Comments at 2 (“[G]eorouting would ensure that callers to the Los Angeles 988 Call Center were located within the County and could be connected to a nearby mobile crisis response team.”); LegalMind Society Comments at 4 (“Enabling georouting of 988 calls will streamline activation of the 911 system in those cases where emergency responders are needed.”); Lucinda Mercer Comments at 1 (arguing that georouting solutions will help connect callers to mobile crisis services); Washington State Department of Health (DOH) Comments at 2 (“Georouting would enable the 988 counselor to contact the appropriate PSAP with greater accuracy.”).

⁵⁶ See, e.g., AFSP Comments at 3 (sating that georouting “will support its goal to connect people quickly and safely to local resources, especially certain populations disproportionately impacted by suicide who have unique needs”); Jeannie Taylor Comments at 1 (Express) (asserting that georouting for 988 calls will “allow counselors at local crisis centers to better respond to unique factors and situations such as faced by persons with hearing loss”); MHA Comments at 2 (“[W]e can continue to foster access and equity by employing the benefits of a georouting mandate.”); Vibrant MHLG Comments at 2 (“The proposed mandate will improve access to critical local crisis counselors and resources, while fostering equity for populations across the United States.”); Washington State DOH Comments at 3 (“Georouting would further digital equity without compromising confidentiality, which is essential to 988’s success, as suicide and experiencing mental health crises continue to be stigmatized in our society.”).

⁵⁷ Vibrant Comments at 6.

⁵⁸ See Appx. A (new 47 CFR § 52.202(a)(1)).

the Lifeline Administrator sufficient to allow routing of the 988 call by the Lifeline Administrator.⁵⁹ In conjunction with our mandate, we recognize the Lifeline Administrator's commitment to continue to "safeguard user privacy and confidentiality" as georouting is implemented.⁶⁰

18. *Georouting.* We define "georouting data," for purposes of these rules, as location data generated from cell-based location technology that is aggregated to a level that will not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset.⁶¹ We find that this definition of "georouting data" most appropriately balances the need to maintain the privacy of 988 callers while ensuring the 988 Lifeline has the information needed to route calls to geographically appropriate crisis centers. The record reflects significant support for georouting solutions that provide geographic routing information to the Lifeline without identifying a caller's precise location.⁶² Indeed, we received over 1,500 comments from National Alliance on Mental Illness (NAMI) advocates representing nearly every state expressing support for requiring wireless providers to implement georouting solutions for 988 calls while protecting privacy.⁶³ Many commenters emphasized the importance of not disclosing more precise location information to maintain callers' privacy and ensure trust in the 988 Lifeline.⁶⁴ Several commenters also highlight that the expectations of 988 callers differ from the context of 911 calls, where callers generally expect an immediate, location-specific medical or police response.⁶⁵

19. To ensure the privacy of 988 callers, we decline, at this time, to require wireless providers to provide more precise geolocation data with 988 calls. Commenters, including mental health advocates and crisis counseling experts, express significant privacy concerns about including geolocation information with wireless 988 calls,⁶⁶ which, unlike georouting data, does involve the transmission of a

⁵⁹ *Id.* (new 47 CFR § 52.202(a)(2)); *infra* Section III.F (discussing technical considerations related to georouting solutions, including limitations when georouting data may not be available, such as during roaming).

⁶⁰ Vibrant Reply at 3.

⁶¹ *See* Appx. A (new 47 CFR § 52.202).

⁶² *See, e.g.,* AFSP Comments at 2; Brittany Miles Comments (Express); C.K. McGhee Comments (Express); Ellen Finch Comments at 1 (Express); Elaine Sullivan Comments at 1; MHA Comments at 3; NCMW Comments at 2; NY OMH Comments at 1; Reimagine Crisis Response Comments at 1; Trevor Project Comments at 4; Whitney Redden Comments (Express); *see also* ATIS Reply at 5 ("ATIS supports the Commission's decision to only consider georouting (i.e., routing based on rough location) rather than geolocation (i.e., routing based on precise location) for the 988 Lifeline at this time."); CTIA Reply at 3 (noting that "[c]ommenters across all sectors recognize the benefits of georouting information to enable the 988 Lifeline to meet callers' needs more effectively while protecting callers' privacy").

⁶³ *See, e.g.,* NAMI Comments at 2; NAMI Colorado Springs Comments at 1 (Express); NAMI Florida Comments at 1 (Express); NAMI Illinois Comments at 1 (Express); NAMI Minnesota Comments at 1 (Express) (all expressing support for "the proposed rule to require wireless carriers to implement georouting solutions for calls to the [Lifeline], while protecting confidentially and personal information").

⁶⁴ *See, e.g.,* Trevor Project Comments at 2; Vibrant MHLG Comments at 2.

⁶⁵ *See, e.g.,* Comtech Comments at 4; EPIC Reply at 4 ("More important than the technological and legal considerations that distinguish calls to 988 from calls to 911 are the distinctions in needs and expectations between those calling 988 and those calling 911.").

⁶⁶ *See, e.g.,* NAMI Comments at 3 ("Protecting personal information and specific location information of callers is of paramount importance for our NAMI Alliance."); Trevor Project Comments at 2 ("Any efforts to georoute 988 contacts to local crisis call centers must ensure that georouting does not facilitate geolocation and that any personally identifying information, such as name or address, is confidential and protected."); EPIC Reply at 1 ("We cannot support the Commission mandating georouting for 988 if that is merely a step on the path to non-consensual geolocation of persons in distress."); Thomas Grinley Comments at 1 (Express) (expressing concerns that "geolocation abilities allow for police response").

caller's precise location. The Commission previously considered the potential benefits of including geolocation information with calls to the 988 Lifeline. In this regard, in April 2021, as directed by Congress pursuant to the National Suicide Hotline Designation Act of 2020,⁶⁷ the Commission submitted a report that examined the costs and feasibility of transmitting dispatchable location information with calls to 988.⁶⁸ As the Wireline Competition Bureau explained in the *988 Geolocation Report*, transmitting geolocation information with calls to the 988 Lifeline raised a variety of important privacy concerns, legal issues, and technical complexities that require extensive investigation and time to resolve.⁶⁹ Several commenters highlight that the challenges identified in the *988 Geolocation Report* remain relevant today.⁷⁰ Moreover, the record does not evidence a need to include geolocation information with wireless 988 calls to facilitate routing to the appropriate local crisis center.⁷¹

20. The rules we adopt today allow CMRS providers and the Lifeline Administrator flexibility in developing and implementing technical solutions, for example, aggregating georouting data at the county or wire center level, while protecting privacy interests by prohibiting the transmission of more granular cell site data or the precise location of the caller. In its comments, the Lifeline Administrator explains that the georouting solutions developed by the nationwide wireless providers, in conjunction with SAMHSA and the Lifeline Administrator were designed to “minimize[] user-specific data to simply route the user to the nearest crisis center based on cell phone tower data, rather than using a callers’ exact phone location.”⁷² Similarly, T-Mobile asserts that its georouting solution “protects the privacy interest of callers by not providing precise geolocation information.”⁷³ CX360 also states that the georouting solutions “never capture[] a help seeker’s precise location.”⁷⁴ We anticipate that the definition of “georouting data” that we adopt today will give nationwide CMRS providers the flexibility to continue their efforts to implement georouting solutions and comply with their obligations to protect user location information. Additionally, we believe these privacy safeguards included in the definition alleviate record concerns that georouting rules may “inadvertently suppress use of the 988 Lifeline” due to concerns about disclosing geolocation information.⁷⁵

21. *Voluntary Implementation by Nationwide CMRS Providers.* We recognize that certain commenters contend that mandating georouting for wireless 988 calls is unnecessary at this time. Some telecommunications industry commenters oppose adoption of rules requiring CMRS providers to implement georouting solutions for wireless 988 calls,⁷⁶ arguing that georouting solutions will soon be

⁶⁷ National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, § 5, 134 Stat. 832, 834 (2020).

⁶⁸ 988 Geolocation Report at 2, 10-17.

⁶⁹ *Id.*

⁷⁰ See, e.g., ATIS Reply at 5 (agreeing with the Commission that transmitting precise location information with 988 calls presents a variety of technical, legal, and privacy concerns that would require significant investigation and time to resolve); EPIC Reply at 4 (stating that “callers to 988 may not seek an immediate, location-specific response and at-risk users may be reluctant to call 988 due to inadequate privacy protections”).

⁷¹ See Vibrant Comments at 4 (stating that georouting data provides “sufficient information to connect individuals to a crisis contact center most proximate to their general physical location” and that “precise location information - also known as geolocation - is not needed at this time”); Vibrant Reply at 6 (supporting the same conclusion).

⁷² Vibrant Comments at 6 (“When an individual contacts the 988 Lifeline, the crisis counselor who responds will not know who the individual is or where they are precisely located.”); Vibrant Reply at 3 (“Crisis counselors do not currently have access to an individual’s precise location information and this would remain true under the georouting solution.”).

⁷³ T-Mobile Reply at 1.

⁷⁴ CX360 Comments at 12.

⁷⁵ INCOMPAS Comments at 3.

available through the voluntary efforts of nationwide CMRS providers.⁷⁷ They also claim that mandating georouting may introduce uncertainty, potentially delaying or complicating the deployment of georouting solutions.⁷⁸ While we recognize industry's assertions, these providers also acknowledge the importance of promptly implementing georouting solutions for wireless 988 calls.⁷⁹ In mandating georouting, we carefully balance the request to proceed more cautiously, as voiced by providers, with the significant record support calling for the need for a georouting mandate that enhances access to critical local services for callers in crisis without delay, while giving providers the flexibility to develop georouting solutions

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⁷⁶ See, e.g., CTIA Comments at 2 (“[I]t is not necessary for the Commission to adopt 988 georouting rules at this time.”); Intrado Life & Safety Comments at 9 (“Intrado is not convinced that formal regulation is necessary at this time to achieve the Commission’s goals of improving 988 routing based on the 988 Lifeline Administrator’s current routing capabilities and methodology.”); RWA Comments at 7-8 (arguing that “mandating a 988 georouting solution is premature”); AT&T Reply at 2 (“Commenters correctly observe that a georouting solution does not require the Commission to modify its existing rules.”); CCA Reply at 1 (urging “the Commission to refrain from adopting rules requiring implementation of 988 georouting solutions for all carriers at this time”); CTIA Reply at 12 (“No rules are needed to ensure the implementation of georouting solutions.”); CX360 Reply at 3 (urging the Commission to “refrain from mandating the use of a particular georouting solution”); Southern Linc Reply at 1 (“[T]here is no need for the Commission to adopt rules on the georouting of 988 calls at this time.”); T-Mobile Reply at 1 (arguing that the Commission “should not take any regulatory action that would disrupt the imminent launch” of georouting solutions).

⁷⁷ See, e.g., CTIA Comments at 2 (“With georouting solutions soon becoming available to the 988 Lifeline, it is not necessary for the Commission to adopt 988 georouting rules at this time.”); T-Mobile Comments at 2 (“Given the close collaboration among stakeholders and the imminent rollout of the georouting solution, the Commission does not need to take further regulatory action.”); ATIS Reply at 4 (agreeing with CTIA that regulatory action is unnecessary because georouting solutions will soon become available); Southern Linc Reply at 2 (agreeing with CTIA and T-Mobile that regulatory action is unnecessary because georouting solutions will soon become available); see also CCA Reply at 6 (“Because of the significant work that has already been done voluntarily by larger providers and the blueprint that work offers to non-nationwide providers, rules mandating the deployment of 988 geolocation services are not necessary at this time.”); RWA Comments at 1 (“[T]he Commission should allow small rural non-nationwide CMRS providers to implement georouting for wireless calls to the 988 Lifeline voluntarily”).

⁷⁸ See T-Mobile Comments at 7; see also AT&T Reply at 3; ATIS Reply at 4; CCA Reply at 3; RWA Reply at 3.

⁷⁹ See e.g., Comtech Comments at 3 (“Given the critical, lifesaving nature of 988 emergency calls, it is essential to expediently route wireless 988 calls to the appropriate local call center located where the 988 call originated.”); CTIA Comments at 3 (“With approximately 80% of calls to 988 made from wireless phones, the Lifeline Administrator needs additional information to enable it to route calls to a local crisis center that corresponds with the location of the caller.”); CX360 Comments at 2 (“CX360 agrees with the Commission that georouting of wireless calls to the 988 Lifeline is essential.”); T-Mobile Comments at 1 (“T-Mobile commends the Commission’s interest in ensuring that the Lifeline has the information it needs to route calls from a person in distress to the geographically relevant crisis center best positioned to help.”); ATIS Reply at 3 (“ATIS appreciates the Commission’s interest in ensuring that calls to the 988 Lifeline are properly routed to appropriate 988 call centers.”); AT&T Reply at 1-2 (agreeing with the Commission that connecting callers in crisis with local crisis centers is important); CCA Reply at 1 (“CCA and its members support efforts to ensure individuals experiencing mental health crises have access to the resources they need.”); Intrado Life & Safety Reply at 1 (noting that the record “reflects universal acknowledgement of the inadequacy of the current 988 routing system and broad agreement of the need for improvement by deploying georouting”); NASNA Reply at 2 (agreeing that “988 is a valuable and effective resource to those in need and wireless geo-routing of those calls will only add to that value and effectiveness”); Southern Linc Reply at 1 (supporting the Commission’s goal of “improving the ability to route calls made to the [Lifeline] to the geographically appropriate crisis center to enhance the support and resources available to callers in crisis”); RWA Reply at 1 (“RWA commends the efforts of the Commission to improve the 988 Lifeline and provide critical assistance to people experiencing a mental health crisis.”).

that fit with their network capabilities to the extent that those solutions are compatible with the systems used by the Lifeline.⁸⁰

22. As we noted in the *988 Georouting Second Further Notice*, certain stakeholders have already engaged with SAMHSA and the Lifeline Administrator to develop georouting solutions for 988 calls.⁸¹ The record reflects that the three nationwide wireless providers have already implemented georouting for wireless 988 calls or are in the process of deploying georouting solutions in their networks.⁸² We support the voluntary efforts by wireless providers and our federal partners to deploy georouting solutions for 988 calls in their wireless networks. We decline, however, to allow deployment of georouting solutions on a purely voluntary basis.⁸³ Given the clear public interest benefits of supporting georouting for wireless 988 calls,⁸⁴ we find that deployment and implementation of georouting solutions for wireless 988 calls should not be optional.

23. We disagree with CTIA's contention that no commenters have offered "a reason why rules are needed to ensure that 988 georouting solutions are implemented."⁸⁵ As the Lifeline Administrator states, a georouting mandate is needed to ensure consistent access to the 988 Lifeline's localized resources, prevent variations in support based on an individual's service provider, and to allow the 988 Lifeline to better serve individuals in crisis.⁸⁶ The nation's mental health and substance use disorder community also supports immediate action to require wireless providers to implement georouting solutions for wireless 988 calls, emphasizing the urgency of connecting individuals in crisis to local services.⁸⁷ For these reasons, we conclude that allowing wireless providers to implement georouting solutions on a purely voluntary basis would undermine our goal of ensuring that the benefits of georouting are realized nationwide in a timely manner.

24. We further disagree with commenters that our georouting requirements would interfere with the efforts of the three major nationwide wireless providers to implement and deploy georouting solutions.⁸⁸ The rules we adopt today give wireless providers the flexibility to continue their efforts to implement the georouting solutions developed with SAMHSA and the Lifeline Administrator, ensuring that the benefits of improved 988 call routing can be realized without delay.⁸⁹ ATIS asserts that "[a] more

⁸⁰ See *infra* paras. 22-24.

⁸¹ See *988 Georouting Second Further Notice* at *6, para. 15.

⁸² See *supra* note 32.

⁸³ See *supra* note 77 (commenters supporting purely voluntary deployment of georouting).

⁸⁴ See *supra* Section III.A, Georouting Will Improve Access and Efficiency of the 988 Lifeline.

⁸⁵ CTIA Reply at 5.

⁸⁶ See Vibrant Comments at 4-5, 7.

⁸⁷ NAMI et al., Mar. 20, 2024 Letter at 2 (supporting "immediate action to improve the routing of 988 calls" and stating that "it is of the utmost urgency to ensure that people in crisis are connected to . . . resources in their communities").

⁸⁸ See, e.g., CTIA Comments at 2 (urging the Commission to ensure that "rules do not interfere with wireless providers' and the Lifeline's ability to deploy the georouting solutions that have been developed as soon as practicable"); ATIS Reply at 4 ("To the extent that the Commission nonetheless adopts new rules, it should ensure that these rules do not interfere with service providers' and the 988 Lifeline's ability to deploy the georouting solutions already in progress as soon as practicable."); CTIA Reply at 2 ("To the extent that the Commission considers rules, however, the record confirms that such rules should be aligned with, and in any event should not undermine, the georouting solutions currently being implemented.").

⁸⁹ AT&T Reply at 3 (explaining that a general requirement "would not interfere with existing efforts between wireless providers and the 988 Lifeline to georoute 988 calls and allow flexibility to adapt to changing

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flexible, requirements-based approach would facilitate the timely deployment of 988 routing solutions” and allow wireless providers to “continue their deployments.”⁹⁰ Further, as AT&T states, a general requirement will “not interfere with existing efforts between wireless providers” and will provide “flexibility to adapt to changing technologies.”⁹¹

25. *Georouting Required for all CMRS Providers.* We find that requiring all CMRS providers to have the capability to provide georouting data with 988 calls is necessary to ensure that wireless 988 callers receive the demonstrated benefits of georouting, regardless of the providers’ network configurations. We define nationwide CMRS providers as those providers whose service extends to a majority of the population and land area of the United States. Non-nationwide CMRS providers include all CMRS providers other than a nationwide CMRS provider.⁹² We agree with Reimagine Crisis Response that “[c]onnecting more people to timely and local crisis support and services through accurately routed 988 calls will save lives.”⁹³ For that reason, we decline to limit application of our rules to voice calls carried end-to-end on IP networks, as advocated by some commenters.⁹⁴ However, we recognize that current georouting solutions may rely on the IP-based capabilities of the Lifeline and wireless providers’ networks, which may impact wireless providers’ ability to transmit georouting data with wireless 988 calls over non-IP networks.⁹⁵ Therefore, the rules we adopt today require nationwide and non-nationwide providers to provide georouting data when available and offer flexibility for wireless providers to work with the Lifeline Administrator on a case-by-case basis to address any individualized network considerations. We also provide non-nationwide providers an ample compliance deadline, as discussed below, to allow time for development of technical solutions.⁹⁶ We conclude that this approach appropriately balances the public interest in providing critical improvements to life-saving services with CMRS providers’ needs to develop technical solutions to implement the new requirements. We find that the targeted requirements we adopt today give wireless providers sufficient flexibility to capitalize on their current technology and network configurations⁹⁷ to ensure that the maximum number of wireless 988

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technologies”); *see also* Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1 (filed Oct. 9, 2024) (CTIA Oct. 9, 2024 *Ex Parte*).

⁹⁰ ATIS Reply at 4.

⁹¹ AT&T Reply at 3.

⁹² *See* Appx. A (new 47 CFR § 52.202(d)); *see also* 47 CFR § 9.10(i)(1)(iv) and 47 CFR § 9.10(i)(1)(v).

⁹³ Reimagine Crisis Response Comments at 2.

⁹⁴ *See* CTIA Comments at 6 (arguing that “any Commission-imposed georouting requirements should be limited to voice calls initiated, maintained, and terminated (i.e., carried end-to-end) on IP-based networks”); CCA Reply at 4 (stating that “[c]urrent 988 georouting solutions utilize the capabilities of IP-based networks from call origination through termination”); CTIA Reply at 6 (stating that current georouting solutions “are premised on the IP-based capabilities of the 988 Lifeline, its vendors, and wireless networks”).

⁹⁵ *See, e.g.,* CTIA Comments at 6 (stating that “current solutions to deliver georouting information with wireless 988 calls utilize the capabilities of IP-based networks”); CX360 Comments at 11 (noting that CX360’s georouting solution “leverages the standard, pre-existing P-Asserted-Identity call header to relay location data”); CCA Reply at 4 (stating that “[c]urrent 988 georouting solutions utilize the capabilities of IP-based networks from call origination through termination”); CTIA Reply at 6; Letter from Angela Simpson, General Counsel & Senior Vice President Legal and Regulatory Affairs, CCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1 (filed Oct. 10, 2024) (CCA Oct. 10, 2024 *Ex Parte*) (urging the Commission to “alleviate the burden on non-nationwide providers who have non-IP elements in their networks” and stating that “the ability to include geolocation [*sic*] data in the call header, does not exist on non-IP networks”).

⁹⁶ *See infra* Section III.H, Implementation Time Frame for Georouting 988 Calls to the Lifeline.

⁹⁷ *See* CTIA Comments at 5 (arguing that “a general obligation provides flexibility that will allow wireless providers and the Lifeline to maximize the capabilities of technology currently available to wireless providers”); AT&T Reply at 3 (arguing that “a general requirement that wireless carriers provide location information to the 988 Lifeline in a
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callers benefit from georouting as quickly as possible.⁹⁸ The Commission will take further action, if necessary, to ensure that wireless providers are providing the Lifeline Administrator with georouting data when available to ensure the Administrator is capable of routing wireless 988 calls.

26. We are unpersuaded by arguments that non-nationwide CMRS providers should be exempt from implementing georouting for wireless 988 calls.⁹⁹ RWA claims that georouting solutions have not “been tested in a real-world application and implemented by any CMRS provider.”¹⁰⁰ Southern Linc also claims that non-nationwide CMRS providers have not yet participated in the georouting “solutions development process.”¹⁰¹ The record reflects, however, that the nationwide providers have developed and implemented or are in the process of implementing georouting solutions for wireless 988 calls.¹⁰² While we acknowledge that non-nationwide CMRS providers may face operational limitations when implementing georouting solutions for wireless 988 calls,¹⁰³ we agree with commenters that non-nationwide CMRS providers will be able to leverage the georouting solutions developed and implemented by nationwide providers in collaboration with SAMHSA and the Lifeline Administrator.¹⁰⁴ Further, several commenters highlight the importance of implementing georouting solutions to improve access to the 988 Lifeline’s crisis intervention services for people in rural areas, who face a disproportionate risk of suicide and may need to be aware of limited mental healthcare resources available near their communities.¹⁰⁵ We encourage non-nationwide CMRS providers to collaborate with SAMHSA and the

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format compatible with that used by the Lifeline” would “allow flexibility to adapt to changing technologies”); *see also* ATIS Reply at 3; CCA Reply at 4; CX360 Reply at 4 (all agreeing with CTIA that a general obligation provides flexibility that will maximize the capabilities of technology).

⁹⁸ *See* CCA Reply at 5 (“While non-IP networks and the challenges associated with roaming may impact how some calls are routed, the majority of calls will be properly routed with the solutions that nationwide providers are ready to deploy.”); CTIA Reply at 4-5 (noting “[t]he nationwide providers’ prompt implementation will enable the provision of georouting information for more than 98% of all wireless subscribers in the United States”).

⁹⁹ RWA Comments at 5 (arguing that “[r]equiring that small rural non-nationwide CMRS providers implement 988 georouting for all wireless calls at this time would be premature” and that “these providers should be specifically exempted from any mandate imposed on other wireless carriers”).

¹⁰⁰ *Id.*

¹⁰¹ Southern Linc Reply at 4.

¹⁰² *See supra* note 32.

¹⁰³ *See, e.g.,* CTIA Comments at 6 (urging the Commission to recognize “technical and practical limitations for smaller subsets of calls and providers”); RWA Reply at 3 (“Small non-nationwide providers face both operational and financial challenges in implementing a new technological solution.”); CCA Reply at 2 (urging the Commission to adopt general rules that account for the “limitations of currently available 988 georouting solutions, and the challenges such rules would pose on non-nationwide providers”).

¹⁰⁴ CTIA Comments at 7 (“The georouting solutions that the nationwide wireless providers are developing with the Lifeline should provide a workable framework for non-nationwide providers.”); CCA Reply at 2 (stating that “while non-nationwide providers have yet to begin implementing 988 georouting solutions in their networks, the solutions developed by nationwide providers provide a blueprint for nonnationwide providers to adopt in the future”); CTIA Reply at 5 (reiterating that “the georouting solutions developed by the nationwide wireless providers, in conjunction with the 988 Lifeline, can serve as models for non-nationwide wireless providers”); Southern Linc Reply at 3 (agreeing with CTIA that the georouting solutions developed by nationwide wireless providers “should provide a workable framework for non-nationwide providers”).

¹⁰⁵ *See, e.g.,* AFSP Comments at 3 (“Routing to 988 based on approximate location will strengthen the accuracy and immediacy of a mental health response for those in rural areas who might not have easy access to in-person resources.”); NCMW Comments at 4 (emphasizing the importance of access to mobile crisis response services in rural areas); NY OMH Comments at 1 (stating that the absence of georouting solutions places “New Yorkers living in rural areas, particularly working-aged men” at an “even higher risk of not being connected to local, life-saving resources in the event of an imminent crisis”); Vibrant Comments at 6 (“Individuals living in rural areas are also at

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Lifeline Administrator in developing and implementing georouting solutions.¹⁰⁶ To further reduce the burden on non-nationwide entities under the rules we adopt today, we grant longer compliance timelines to non-nationwide CMRS providers, as discussed below.¹⁰⁷

C. Georouting Data Format Compatible with the Lifeline

27. In the *988 Georouting Second Further Notice*, we described our goal to “undertake a holistic review to ensure that any georouting solution deployed is compatible with the needs and systems of the 988 Lifeline, as determined by SAMHSA, and successfully connects callers in crisis with the local support they need.”¹⁰⁸ The requirements we adopt today will ensure that the vast majority of wireless 988 callers receive the benefits of georouting as expeditiously as possible by ensuring that georouting data is provided in a format that is compatible with the Lifeline’s routing platform, maintaining the centralized routing system of the 988 Lifeline, and giving wireless providers sufficient flexibility to implement and deploy georouting solutions.

28. *Capability to Provide Georouting Data.* Consistent with the *988 Georouting Second Further Notice*, we require all CMRS providers to have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format that is compatible with the Lifeline’s routing platform.¹⁰⁹ The record evinces support for this requirement.¹¹⁰ For example, CX360 states that georouting solutions that leverage the Lifeline’s existing infrastructure “create technical efficiencies” and align with the Lifeline’s efforts to provide “community-based support with national-level support for specific at-risk communities.”¹¹¹ T-Mobile asserts that compatibility with the Lifeline will avoid the significant costs incurred for network or system changes and “minimize[] the risk of technological errors” in efficiently delivering 988 calls.¹¹² Several commenters also indicate that georouting data in a format that is

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higher risk of suicide completion and need timely access to the resources and support provided by the 988 Lifeline.”).

¹⁰⁶ ATIS Reply at 6 (urging “the Commission to encourage non-nationwide carriers to work with SAMHSA and Vibrant, as the nationwide providers did”).

¹⁰⁷ See *infra* Section III.H.

¹⁰⁸ *988 Georouting Second Further Notice* at *2, para. 4.

¹⁰⁹ See Appx. A (new 47 CFR § 52.202(a)(1)).

¹¹⁰ See, e.g., Cal OES Comments at 5 (supporting the Commission’s “desire to undertake a holistic review to ensure that any georouting solution deployed is compatible with the needs and systems of [the Lifeline], as determined by SAMHSA”); CX360 Comments at 4 (arguing that any georouting rules should be “both general in nature and compatible with the systems and methodologies already adopted by the Lifeline Administrator”); NAMI Comments at 3 (urging the Commission “to ensure that any geographic boundaries identified and the associated georouting technology comply with the needs and requirements of the Lifeline network”); T-Mobile Comments at 6 (stating that T-Mobile’s “georouting solution was designed precisely to ensure compatibility with the needs and systems of the 988 Lifeline, as determined by SAMHSA”); ATIS Reply at 5 (noting that “routing solutions must be coordinated with the [Lifeline Administrator] through which calls are routed”); AT&T Reply at 3 (“[C]ommenters correctly call for only a general requirement that wireless carriers provide location information to the 988 Lifeline in a format compatible with that used by the Lifeline.”); see also CTIA Reply at 4 (stating that “the nationwide wireless providers are actively working with the Lifeline Administrator to expeditiously implement georouting solutions for end-to-end IP-based wireless 988 calls that are compatible with the 988 Lifeline and wireless providers’ existing network configurations and capabilities”); CX360 Reply at 3 (“CX360 has worked extensively with wireless carriers and other industry participants to develop a georouting solution for wireless calls that fully meets the needs of the Lifeline Administrator and all 988 Lifeline stakeholders.”).

¹¹¹ CX360 Comments at 3.

¹¹² T-Mobile Reply at 2.

compatible with the Lifeline's routing platform will prevent delays in deploying georouting solutions.¹¹³ Moreover, the Lifeline Administrator emphasizes, and we agree, that implementing georouting solutions that are compatible with the 988 Lifeline's "existing infrastructure and a uniform standard developed in partnership with SAMHSA and the Administrator [will] allow the 988 Lifeline to better serve individuals in crisis."¹¹⁴ We emphasize that our rules create an ongoing obligation for wireless providers to ensure that georouting data is in a format that is compatible with the Lifeline's routing platform. We encourage wireless providers to collaborate with SAMHSA and the Lifeline Administrator in developing and testing georouting solutions that meet these compatibility requirements.¹¹⁵

29. The record reflects that the three nationwide wireless providers have already developed and implemented, or are in the process of implementing georouting solutions, that are compatible with the needs and systems of the 988 Lifeline.¹¹⁶ As the Lifeline Administrator notes, these georouting solutions are the preferred solution for the Lifeline, were designed to be compatible with the Lifeline's existing routing structure, and do not require "creation of an entirely new 988 Lifeline framework and architecture."¹¹⁷ We anticipate that the approach we adopt today will allow wireless providers to build on the success of the efforts of the nationwide wireless providers, streamlining implementation and costs¹¹⁸ while facilitating faster deployment of georouting solutions.¹¹⁹

30. Given the importance of providing meaningful support to help-seekers reaching out to the 988 Lifeline, we recognize that our federal partners may choose to expand the functionality of the Lifeline's system in the future to support additional georouting data formats. We direct the Wireline Competition Bureau to routinely consult with our federal partners at SAMHSA regarding the format of georouting data that is compatible with the Lifeline's system. We further direct the Wireline Competition Bureau to monitor the development of compatible georouting solutions and, if necessary, propose and seek comment on implementation parameters for wireless providers for any compatible georouting data that is substantially modified from the georouting rule adopted herein.

31. *Centralized Routing.* Today, routing to the appropriate crisis call center is handled by a centralized routing system overseen by the Lifeline Administrator and supported by a grant from SAMHSA, and we find it is critical to retain this structure.¹²⁰ We agree with commenters that our rules

¹¹³ See, e.g., CX360 Comments at 4-5, 10; Vibrant Comments at 3-5; T-Mobile Reply at 2.

¹¹⁴ Vibrant Comments at 7.

¹¹⁵ Vibrant Comments at 5 ("Vibrant looks forward to collaborating closely with partners, SAMHSA, and the telecommunications industry on solutions for other 988 Lifeline modalities.").

¹¹⁶ See, e.g., *id.* at 4-5 (asserting that the georouting solutions developed in conjunction with the three nationwide wireless providers "allow real-time routing updates without the creation of an entirely new 988 Lifeline network and architecture"); T-Mobile Comments at 6 ("The current georouting solution was designed precisely to ensure compatibility with the needs and systems of the 988 Lifeline, as determined by SAMHSA."); CTIA Reply at 4 (stating that "the nationwide wireless providers are actively working with the Lifeline Administrator to expeditiously implement georouting solutions . . . that are compatible with the 988 Lifeline and wireless providers' existing network configurations and capabilities").

¹¹⁷ Vibrant Comments at 4-5.

¹¹⁸ See T-Mobile Reply at 2 ("Continuity with the Lifeline's platform avoids 'significant costs . . . for network or system changes' and minimizes the risk of technological errors that would hinder the efficient delivery of life-saving call.").

¹¹⁹ See Vibrant Reply at 1-2 (asserting that the georouting solutions developed in collaboration with the three nationwide wireless providers "leverage the 988 Lifeline's existing routing structure, which will expedite implementation of georouting and ensure that help seekers are connected to local crisis support").

¹²⁰ See Vibrant 988 Geolocation Reply at 1 (explaining that currently "the Lifeline handles all call routing to individual centers within the network utilizing Lifeline's own routing database keyed on area code and exchange"); SAMHSA, 988 Suicide & Crisis Lifeline Geolocation Needs, 988 Geolocation Forum Presentation at 37 (May 24, (continued....))

should preserve the role of the Lifeline Administrator in routing 988 calls to geographically appropriate local crisis centers.¹²¹ Consistent with the *988 Georouting Second Further Notice*, we recognize that SAMHSA and the Lifeline Administrator are best suited to ensure that calls are properly routed and ultimately answered by a crisis center once the call is received by the Lifeline Administrator from the originating wireless provider.¹²² The record highlights that the Lifeline Administrator, under the direction of SAMHSA, plays a critical role in managing the 988 Lifeline’s system by balancing call volume, ensuring calls are efficiently routed to appropriate and available crisis centers, and minimizing the technical burdens placed on crisis centers so they can focus on saving lives.¹²³ As USTelecom emphasizes, the challenges associated with routing calls to the Lifeline are not limited to directing calls to the “correct crisis center,” but also ensuring they reach available crisis centers, given that many have varying operating hours.¹²⁴

32. We find that the success of the Lifeline system in helping individuals in crisis underscores the importance of maintaining the centralized routing system.¹²⁵ As the Lifeline Administrator notes, “[e]valuations of the 988 Lifeline service have found that the majority of callers

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2022); Vibrant Emotional Health, *Geolocation and 988: The Need for Location Routing and Rapid Response to Persons at Imminent Risk of Suicide*, 988 Geolocation Forum Presentation at 42-43 (May 24, 2022); Vibrant Emotional Health, *Lifeline Technology and Location Data Usage*, 988 Geolocation Forum Presentation at 95-96 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>. The Commission has had no role in establishing, maintaining, or operating the 988 Lifeline’s routing system or the facilities and systems that enable it, and is not a party to any agreement that the Lifeline Administrator and/or SAMHSA has entered to establish, structure, operate, govern, or fund the system.

¹²¹ See, e.g., CTIA Comments at 2 (“Any rules also should preserve the role of the Lifeline to route calls to appropriate local crisis centers, as directed by the [SAMHSA].”); T-Mobile Comments at 7 (arguing that “[d]ecisions regarding how best to route . . . calls should be left to the Lifeline Administrator and SAMHSA”); Vibrant Comments at 5 (asserting that “SAMHSA and Vibrant, as the administrator of the 988 Lifeline, are best positioned to make decisions related to the operational components of the service”); ATIS Reply at 5 (arguing that “routing solutions must be coordinated with the [Lifeline Administrator],” as “[r]outing to the appropriate crisis center is handled by a centralized routing system overseen by the Lifeline Administrator and supported by a grant from SAMHSA”); see also CTIA Reply at 9 (arguing that “[a]ltering the centralized routing of 988 calls . . . would undermine SAMHSA’s and the VA’s administration of the 988 Lifeline”).

¹²² *988 Georouting Second Further Notice* at *8, para. 21; see also CX360 Comments at 6 (“[T]he 988 Lifeline Administrator is best-suited to provide specifications regarding the location information data that needs to be received from wireless carriers to enable the 988 Lifeline Administrator to route wireless calls to geographically appropriate crisis call centers.”); T-Mobile Comments at 7 (stating that “the actual georouting is performed by the Lifeline Administrator and not the carriers” and that “[d]ecisions regarding how best to route such calls should be left to the Lifeline Administrator and SAMHSA”); CTIA Oct. 9, 2024 *Ex Parte* at 2.

¹²³ See, e.g., CX360 Comments at 3 (noting that the Lifeline Administrator’s infrastructure “helps balance call volumes to avoid overloading individual call centers and ensures calls are answered as quickly as possible”); *id.* at 14 (describing the Lifeline’s process of minimizing “technical burdens on crisis call centers”); see also Vibrant Comments at 1 (noting that the Lifeline Administrator is responsible for management of “technical infrastructure . . . enhance[ing] best practices for the network[,] ensur[ing] service quality and efficiency of the network’s operations, and creating specialized services and resources to reach high-risk populations”); Letter from Leighton T. Brown, Counsel, CX360, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1 (filed Oct. 9, 2024).

¹²⁴ USTelecom Comments at 4.

¹²⁵ CX360 Reply at 4-5 (“[T]he remarkable effectiveness of the 988 Lifeline undoubtedly supports the use of a georouting solution that builds on the Lifeline’s success, rather than redesign it.”); see also Burrell Behavioral Health Comments at 1 (stating that studies have shown that “nearly eighty percent of callers interviewed nine days on average after the call reported that the 988 Lifeline prevented them from taking their own lives”); FirstLink NorthDakota Comments at 1 (same); HeartLine Comments at 1 (same); NWHS Comments at 1 (same); VOAWW Comments at 2 (same).

were significantly more likely to feel less depressed, less suicidal, less overwhelmed, and more hopeful after speaking with a 988 Lifeline crisis counselor.”¹²⁶ We find that the requirements we adopt today appropriately maintain the critical role of the Lifeline in routing calls to crisis centers.¹²⁷ Additionally, we believe that this approach alleviates record concern about the roles of CMRS providers and the Lifeline in the 988 call path.¹²⁸

33. Although some commenters argue that alternative georouting solutions that bypass the Lifeline’s centralized routing system may offer some benefits for 988 callers,¹²⁹ we find that the benefits of centralized routing greatly exceed the costs of localized routing. In the *988 Report and Order*, the Commission found that the Lifeline’s centralized routing process offered numerous benefits for both the providers that route calls to the 988 Lifeline and the Lifeline itself, including faster implementation, lower costs to maintain 988 routing, and better Lifeline service.¹³⁰ We are convinced by the record that these benefits still remain true today.¹³¹ In particular, we believe that maintaining the Lifeline’s centralized routing process will simplify administration of the Lifeline and allow for faster implementation of georouting solutions. For example, the Lifeline Administrator states that the georouting solutions developed with the nationwide wireless providers using the Lifeline’s centralized routing process “would be cost-effective” for both the Lifeline and providers, and would allow for faster deployment of georouting solutions.¹³²

34. *Specialized Services.* We decline, at this time, to take specific action to apply our georouting requirements to the Lifeline’s specialized services. In the *988 Georouting Second Further Notice*, we sought comment on whether georouting is necessary for specialized services, and whether there are any unique considerations for routing such calls that may impact our proposals.¹³³ As discussed above, the 988 Lifeline’s interactive voice response (IVR) system currently provides callers the opportunity to connect with specialized services by selecting “1” for the Veterans Crisis Line, “2” for a

¹²⁶ Vibrant Comments at 2.

¹²⁷ See Appx. A (new 47 CFR § 52.202(a)(1)-(2)).

¹²⁸ See USTelecom Comments at 2-3 (urging the Commission to clarify the obligations “needed to correctly route a caller to the correct 988 crisis center”).

¹²⁹ See, e.g., Cal OES Comments at 5-7 (arguing that routing 988 calls directly to NG911 networks that have defined “geospatial boundaries” for 988 crisis centers promotes interoperability between 988 and 911 and improves cybersecurity); Comtech Comments at 5-7 (arguing that routing calls using dedicated IP-based 988 call paths provides “public safety grade network reliability”); Intrado Life & Safety Comments at 1-2, 8-9 (arguing that routing 988 calls to “state-designated Internet Protocol (IP) points of interconnection” improves the “security and reliability of the 988 Lifeline,” provides “a distributed routing system where there are multiple carrier routes into multiple networks,” and is “the most-cost effective approach for the long term”); NENA Comments at 1 (arguing that using “NG9-1-1 technologies will provide for interoperability with 9-1-1 systems [and] support for several multimedia communications modalities,” as well as resolve technical problems associated with georouting and provide “failover protection during service interruptions”); see also *infra* Section III.G.

¹³⁰ *988 Report and Order*, 35 FCC Rcd at 7395, para. 42.

¹³¹ See, e.g., CTIA Comments at 8 (arguing that any georouting rules should “align[] with available georouting solutions, allowing the Lifeline and wireless 988 callers to benefit from improved 988 call routing without delay”); CX360 Reply at 10 (arguing that georouting solutions that bypass the Lifeline’s centralized routing platform “would cause unnecessary expense and delay due to the substantial changes to the architecture of the 988 Lifeline that would be required”); see also CX360 Sept. 26, 2024 *Ex Parte* at 2 (stating that a centralized georouting solution “allows rebalancing of the 988 Lifeline call volume to ensure certain crisis call centers are not overwhelmed, and thereby, allows every caller to the 988 Lifeline to receive the help they need in a timely manner”).

¹³² Vibrant Comments at 4-5.

¹³³ *988 Georouting Second Further Notice* at *6, para. 17.

Spanish language line, and “3” for a specialized LGBTQI+ line.¹³⁴

35. We recognize that several commenters assert that georouting data may provide benefits for individuals who use the Lifeline’s specialized services, such as the LGBTQI+ community and veterans.¹³⁵ However, the record demonstrates that there are unique considerations for specialized services, including the need for access to specially trained counselors,¹³⁶ resource constraints,¹³⁷ and increased privacy concerns.¹³⁸ For example, Trevor Project explains that while “geographic location can provide a strong cultural connection for many 988 callers,” research has shown that “competency with LGBTQ+ youth issues is the critical element necessary to effectively support LGBTQ+ young people in crisis.”¹³⁹ We believe our federal partners at SAMHSA and the VA are best positioned to evaluate the benefits and challenges of using georouting data provided with 988 calls for the Lifeline’s subnetworks. We anticipate that maintaining the existing centralized routing process will provide the Lifeline flexibility to use its expertise in deciding the most geographically appropriate crisis centers to direct callers who select specialized services.¹⁴⁰ We also anticipate that our rules will better allow the Lifeline to adapt and

¹³⁴ See *supra* para. 5.

¹³⁵ See, e.g., NACO Comments at 3 (“As the FCC works to implement geo-routing capabilities, counties urge the agency to implement these same capabilities for the 988 Veterans Crisis Line.”); NCMW Comments at 3 (asserting that georouting for specialized services will “improve [the] ability to connect the caller to appropriate resources and supports that are available and accessible in the caller’s area”); MAMH Comments at 3 (“Veterans, service members, and their families, Spanish-language callers, and people seeking LGBTQI+ services should all have access to georouting to the same extent as other populations.”); Washington State DOH Comments at 2 (stating that callers selecting specialized services “would benefit from regionally customized services afforded by georouting”); 988 California: Crisis Center Consortium Comments at 1 (Express) (urging the Commission “to consider applying georouting to 988 specialized services”).

¹³⁶ See Trevor Project Comments at 3 (stating that “LGBTQ+ young people confront obstacles that are unique to their status,” and that crisis services not “equipped to address these specific issues . . . significantly undermine[] the effectiveness of care,” and “cause inadvertent harm . . . if callers are connected with counselors who are not trained to meet their specific needs”); UPMC Comments at 2-3 (supporting “the idea that georouting is not necessary” for specialized services due to existing transfer processes and emphasizing the importance of connecting callers to proper counselors for engagement and safety).

¹³⁷ See NCMW Comments at 3 (discussing georouting for specialized services and emphasizing the need to “ensure sufficient resources are allocated so that the appropriate workforce and services are available in a way that is equitable and geographically appropriate”); Trevor Project Comments at 4 (“In the event georouting solutions are mandated for subnetworks, the increased demand would likely exceed the current subnetwork infrastructure and capacity, undermining the effectiveness of 988.”).

¹³⁸ See, e.g., Laura Noble Comments at 1 (Express) (stating that “confidentiality, in particular, is [an] extremely important issue for members of the transgender community”); Trevor Project Comments at 2; EPIC Reply at 15 (stating that “calls made to a specialized service from a sparsely populated location could also pose greater privacy risk, which can quickly turn into a physical safety risk or other harm to a caller or their loved ones”).

¹³⁹ Trevor Project Comments at 3.

¹⁴⁰ See, e.g., CTIA Comments at 5 (arguing that centralized routing “enables the Lifeline to ensure that calls are appropriately routed to the 988 subnetworks . . . or appropriate local crisis center in the Lifeline network” and that “georouting solutions should preserve these capabilities”); CX360 Comments at 16 (stating that “the Lifeline Administrator’s IVR . . . is critically important for quickly identifying and addressing specialized needs among help seekers”); T-Mobile Comments at 7 (arguing that “additional rules meant to address routing for specialized services . . . are also unnecessary” and that “[d]ecisions regarding how best to route such calls should be left to the Lifeline Administrator and SAMHSA”); Trevor Project Comments at 3-4 (opposing georouting for specialized services and emphasizing the importance of not interfering “with the efficient and effective transfers of callers to subnetworks providing specialized services”); see also CX 360 Sept. 26, 2025 *Ex Parte* at 2 (stating that “the Lifeline Administrator’s [IVR] service . . . enables and expedites the provision of specialized crisis counseling services for members of at-risk communities”).

expand as necessary to meet the unique needs of 988 callers who select specialized services.¹⁴¹

D. Cell-Based Location for Georouting

36. The definition of “georouting data” we adopt specifies that location data is generated using cell-based location technology.¹⁴² This aspect of the georouting rule is central to allowing the nationwide providers’ solutions to proceed and maintain compatibility with the Lifeline’s centralized routing platform. Mental health and crisis counseling experts emphasize the importance of connecting callers to local resources while still protecting the privacy of callers.¹⁴³ As Trevor Project states, “it is vital that a georouting solution is adopted so that those reaching out to 988 can trust it will not jeopardize their privacy.”¹⁴⁴ After considering the record, we find that generating location information using cell-based location technology will best identify a caller’s location to enable routing of 988 calls to geographically appropriate crisis centers,¹⁴⁵ while maintaining the privacy interests of callers.¹⁴⁶ We anticipate that this approach will also provide nationwide providers flexibility to deploy current georouting solutions developed with the SAMHSA and the Lifeline Administrator.¹⁴⁷ As discussed

¹⁴¹ See CX360 Comments at 13 (“Continued use of the IVR also allows the Lifeline Administrator to quickly deploy additional self-identification options to address universally acute stressors as needed.”); Vibrant Reply at 8-9 (“As the Lifeline network adapts to a refined and more accurate routing provided by a georouting solution, there should be flexibility for improvements in how helpseekers want to access specialized support.”).

¹⁴² See Appx. A (new 47 CFR § 52.202 (defining georouting data)).

¹⁴³ See *supra* note 66 (commenters supporting georouting solutions while protecting privacy).

¹⁴⁴ Trevor Project Comments at 2.

¹⁴⁵ See, e.g., 988 California: Crisis Center Consortium Comments at 1 (Express) (agreeing with the Commission that “a georouting solution that is based on cell tower information would best identify a caller’s location to enable routing to a geographically appropriate crisis center”); NAMI Comments at 2 (asserting that “a georouting solution that uses cell tower information is a sufficient way to best identify callers’ location for purposes of connecting them to the nearest crisis call center”); Pew Comments at 2 (supporting this conclusion); Trevor Project Comments at 2 (supporting the use of technology that enables “routing of calls based on cell tower location, which would allow for calls to be directed to centers in geographic areas nearby without revealing the precise location of 988 callers”); UPMC Comments at 3 (stating that “cell tower proximity is practical for routing to call center[s]”); NACO Comments at 2 (arguing in support of an alternative georouting solution, but supporting “the premise of a georouting framework that allow[s] calls to be routed to the nearest call center based on the location of the originating cell tower”).

¹⁴⁶ See, e.g., Pew Comments at 2 (supporting georouting solutions that “use cell phone tower proximity to route calls to local call centers without revealing their specific location”); Michigan State 911 Committee Comments at 1 (agreeing that the georouting solutions developed by the nationwide wireless providers “demonstrates how advanced technologies can be used” for georouting, “which protects the name and specific location of the caller”); Trevor Project Comments at 2 (supporting georouting solutions based on cell tower location and arguing that “[t]his type of solution, which obtains the benefits of georouting without the risks of geolocation, is essential”); EPIC Reply at 2 (supporting the use of “cell tower data or more general geographic data . . . rather than other types of data that might allow for collection and sharing of more precise location information”); Vibrant Reply at 6 (“Vibrant recommends a georouting mechanism that maintains user-privacy by utilizing cell phone tower location, rather than a user’s precise location.”); see also NAMI et al., Mar. 20, 2024 Letter at 2 (stating that georouting solutions based on cell tower location and wire-center boundaries “protect[] callers’ privacy while ensuring that services and resources they receive are in their current community”).

¹⁴⁷ See CTIA Comments at 6 (noting that the georouting solutions “developed by the nationwide wireless providers and the Lifeline rely on geographic information associated with the initiation of the call, such as a cell site identification number”); see also CX360 Comments at 11 (stating that “CX360’s georouting solution is based on information gathered by cell towers”); T-Mobile Comments at 5 (noting that T-Mobile’s “Gateway Mobile Location Center . . . receives the cell tower identifier and uses it to determine the county where the 988 call originated”); AT&T Reply at 4 (explaining that AT&T’s georouting solution involves “loading the PAI header with the NPA-NXX for the wire center correlating to the originating cell site” of a 988 call).

throughout this *Third Report and Order*, although there are commenters that argue an alternative routing solution is preferable, we decline to stray from the Lifeline’s current routing structure and we encourage stakeholders and our federal partners to continue to coordinate on the best way to get callers to the geographically appropriate crisis center.

E. Aggregation of Cell-Based Location Data

37. We require CMRS providers to aggregate location data generated from cell-based technology to a level that will not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset.¹⁴⁸ In the *988 Georouting Second Further Notice*, we sought comment on whether the Commission should mandate the use of one or more particular geographic boundaries that would be applied for georouting solutions and asked commenters to address whether certain boundaries are sufficiently granular to achieve the goal of connecting callers with local resources during a time of crisis.¹⁴⁹ Our decision carefully balances two core objectives of georouting: ensuring the location data is sufficiently granular to connect the caller with local resources and maintaining the caller’s privacy.

38. We agree with commenters that CMRS providers need flexibility to facilitate timely deployment of 988 georouting solutions¹⁵⁰ and account for providers’ network capabilities.¹⁵¹ To give CMRS providers flexibility, we do not specify a particular method for ensuring that location data is aggregated to a sufficiently granular level and allow providers to use technically feasible options for meeting this requirement. Similarly, we decline to mandate the use of one or more particular geographic boundaries. We do, however, require wireless providers to aggregate location data to a level that does not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset.¹⁵²

39. We observe that the georouting solutions the three nationwide wireless providers have deployed or are currently implementing employ different geographic boundaries. For example, T-Mobile’s georouting solution obtains caller location information using cell-based technology, aggregates that location data using Federal Information Processing Series (“FIPS”) code boundaries,¹⁵³ and transmits the georouting data as a 6-digit code in the P-Asserted-Identity (PAI) header of a Session Initiation

¹⁴⁸ See Appx. A (new 47 CFR § 52.202 (defining “georouting data”)).

¹⁴⁹ *988 Georouting Second Further Notice* at *7, para. 19.

¹⁵⁰ CTIA Comments at 2 (“CTIA encourages the Commission to provide wireless providers with flexibility to implement georouting solutions as quickly and efficiently as possible.”); ATIS Reply at 4 (“A more flexible, requirements-based approach would facilitate the timely deployment of 988 routing solutions.”); CCA Reply at 3 (“General rules that adopt a flexible approach will allow for swifter deployment of solutions, promote the improvement of solutions over time, and will not unduly over-tax small and non-nationwide providers”).

¹⁵¹ CTIA Comments at 5 (“A general obligation provides flexibility that will allow wireless providers and the Lifeline to maximize the capabilities of technology currently available to wireless providers and the 988 Lifeline’s existing network configurations, and create incentives for continued evolution of georouting solutions over time.”); ATIS Reply at 3 (agreeing with CTIA); AT&T Reply at 3 (arguing that “a general requirement that wireless carriers provide location information to the 988 Lifeline in a format compatible with that used by the Lifeline” would “allow flexibility to adapt to changing technologies”); CCA Reply at 4 (agreeing with CTIA); CX360 Reply at 4 (agreeing with CTIA).

¹⁵² See Appx. A (new 47 CFR § 52.202 (defining “georouting data”)).

¹⁵³ T-Mobile Comments at 2 (noting that T-Mobile’s georouting solution “provides the Lifeline with a [FIPS] code that identifies the county in which the cell site receiving the 988 call is located”). The Federal Information Processing Series (FIPS) codes are maintained and assigned by the Census Bureau to identify geographic areas. See U.S. Census Bureau, American National Standards Institute (ANSI), FIPS, and Other Standardized Geographic Codes, U.S. Dep’t of Com. (May 1, 2023), <https://www.census.gov/library/reference/code-lists/ansi.html>.

Protocol (SIP) invite message to the Lifeline.¹⁵⁴ Whereas, AT&T's georouting solution aggregates location data using wire center boundaries correlating to the originating cell site.¹⁵⁵ The Lifeline Administrator has confirmed that these solutions are compatible with the Lifeline's network configuration and centralized routing system.¹⁵⁶ Commenters generally agree that county level or wire-center boundaries are sufficiently generalized to protect callers' privacy while still enabling the Lifeline to effectively route calls to geographically appropriate crisis centers.¹⁵⁷

40. NACO requests that we provide sufficient flexibility to allow state and local authorities "to define the boundaries within their jurisdiction that are most suitable" for georouting purposes.¹⁵⁸ While we recognize the role that counties play in addressing the nationwide mental health crisis,¹⁵⁹ we decline at this time to require wireless providers to aggregate location data based on a particular state or local authority's definition of appropriate geographic boundaries. Washington Department of Health claims that allowing wireless providers to use multiple geographic boundaries "would negatively impact crisis centers' ability to accurately predict the volume of need and provide services," which would be particularly challenging "in areas where multiple languages are spoken by different communities."¹⁶⁰ As the Lifeline Administrator notes, states and localities are already involved in the "operational decision making process with SAMHSA and Vibrant" regarding routing of 988 calls and coverage areas of crisis centers.¹⁶¹ We acknowledge that wireless providers' geographic boundaries must align with the 988 network parameters of the Lifeline Administrator and encourage SAMHSA and the Lifeline Administrator to continue their collaborative efforts with stakeholders, and we believe that preserving the Lifeline's centralized routing process provides our federal partners flexibility to develop and expand

¹⁵⁴ See T-Mobile Comments at 4 & n.8 (explaining that T-Mobile's georouting solution "generates a six-digit code" that includes "one prepended digit that identifies the carrier . . . and a five-digit FIPS code that identifies state and county of the cell site through which the caller is placing the 988 call").

¹⁵⁵ AT&T Comments at 4 (stating that the Lifeline "has approved loading the PAI header with the NPA-NXX for the wire center correlating to the originating cell site"). A wire center, as defined in 47 CFR § 51.5, is the location of an incumbent Local Exchange Carrier (LEC) switching facility containing one or more central offices. 47 CFR § 51.5. The wire center boundaries define the area in which all customers served by a given wire center are located. *Id.*

¹⁵⁶ See Vibrant Comments at 4-5.

¹⁵⁷ See, e.g., CTIA Comments at 4 (agreeing that "a georouting solution that provides location information sufficient for the Lifeline to route calls to a geographically appropriate crisis call center, such as by identifying the county where the call originated, would best serve georouting needs while minimizing privacy concerns"); LA County DOMH Comments at 2 (expressing support for county level boundaries); T-Mobile Comments at 5-6 (stating that T-Mobile's georouting solution "provides granular enough information (i.e., state and county of the cell tower) for SAMHSA and the Lifeline Administrator . . . to transfer calls appropriately without revealing the caller's precise geolocation"); ATIS Reply at 5 (agreeing that "a georouting solution that provides location information sufficient for the Lifeline to route calls to a geographically appropriate crisis call center, such as by identifying the county where the call originated, would best serve georouting needs while minimizing privacy concerns"); AT&T Reply at 2 (stating that "comments reveal a consensus that providing the 988 Lifeline with general location information, such as county-level or wire center-level, would allow for routing to the appropriate local crisis center without being so granular as to divulge the caller's location"); CX360 Reply at 2-3 (expressing support for "georouting solution that results in wireless calls to the 988 Lifeline being routed to a crisis center nearest to the county in which the callers is located").

¹⁵⁸ NACO Comments at 2.

¹⁵⁹ *Id.*

¹⁶⁰ Washington State DOH Comments at 2.

¹⁶¹ Vibrant Reply at 7; see also Cal OES Comments at 3 (noting that Cal OES worked with SAMHSA and the Lifeline Administrator "to validate that the California state-based technology complies with the interface requirements of the 988 Lifeline and provides the reporting needed and requested by SAMHSA to handle and transfer 988 calls, chats, and texts").

georouting solutions to meet the Lifeline's needs.

41. We anticipate that our flexible approach toward adopting a georouting mandate strikes the right balance between ensuring that location data is sufficiently granular to achieve the goal of connecting wireless 988 callers with local resources without delay, aligning with the requirements delineated by SAMHSA and the Lifeline Administrator, and maintaining the privacy of 988 callers. We believe that the requirement to aggregate georouting data to a level that does not identify the location of the cell site or base station receiving the 988 call or a more precise location of the handset alleviates record concern about protecting privacy of callers in more densely populated areas.¹⁶² We also anticipate that our approach gives wireless providers discretion to aggregate georouting data using technically feasible methods that are best suited for their networks.¹⁶³

F. Technical Considerations

42. In the *988 Georouting Second Further Notice*, we recognized that there could be technological limitations associated with some georouting solutions and sought comment on whether solutions would work if, for instance, a caller is roaming or if a particular wireless call is out-of-scope for a georouting solution or presents with unreadable routing data.¹⁶⁴ We find that the limitations commenters raised are addressable without jeopardizing the georouting rule we adopt, and which is so critical to further improve the 988 Lifeline for callers in crisis.

43. *Roaming.* Some commenters state technical limitations associated with georouting solutions may arise when individuals call 988 while roaming.¹⁶⁵ CTIA asserts that the “home network operator” may not receive location information, such as the originating cell ID, or may not be able to “correlate the visited provider’s cell ID” to geographic boundaries to generate georouting data.¹⁶⁶ AT&T states that “4G and newer wireless networks,” as designed, do “not support georouting a 988 call made while roaming.”¹⁶⁷ Although we acknowledge the substantial public interest benefits in requiring georouting for all wireless 988 calls, we exclude calls transmitted using roaming capabilities from application of the requirements we adopt today to account for the technical limitations identified in the record.¹⁶⁸ We anticipate that our targeted approach will give providers sufficient flexibility to maximize their current technology and network configurations¹⁶⁹ to ensure that the vast majority of wireless 988

¹⁶² Comtech Comments at 6 (claiming that georouting solutions based on cell tower information will make protecting the privacy of callers “more difficult to guarantee in more densely populated areas,” particularly for “callers connecting to much smaller (and closer) 5G cell towers”).

¹⁶³ See *id.* at 5 (arguing that “boundaries associated with wire centers are not relevant in the context of wireless calls”).

¹⁶⁴ *988 Georouting Second Further Notice* at *8, para. 21.

¹⁶⁵ See CTIA Comments at 6 (urging the Commission to “recognize that providing georouting information is not feasible for calls originated while the customer is roaming due to differences in the way roaming calls are routed and processed”); AT&T Reply at 6 (agreeing with CTIA); CCA Reply at 4-5 (describing technical challenges associated with roaming).

¹⁶⁶ See CTIA Comments at 6-7 & n.16.

¹⁶⁷ See AT&T Reply at 6.

¹⁶⁸ See Appx. A (new 47 CFR § 52.202(b)).

¹⁶⁹ See CTIA Comments at 5 (arguing that “[a] general obligation provides flexibility that will allow wireless providers and the Lifeline to maximize the capabilities of technology currently available to wireless providers”); AT&T Reply at 3 (arguing that “a general requirement that wireless carriers provide location information to the 988 Lifeline in a format compatible with that used by the Lifeline” would “allow flexibility to adapt to changing technologies”); see also ATIS Reply at 3; CCA Reply at 4; CX360 Reply at 4 (all agreeing with CTIA that a general obligation provides flexibility that will maximize the capabilities of technology).

callers benefit from georouting as quickly as possible.¹⁷⁰ Calls using roaming capabilities may be routed to qualified crisis counselors using the area code and exchange, as they are today. Upon development of a further record pertaining to the technical feasibility of transmitting georouting data with roaming calls, the Commission may further consider extending the georouting requirements to these calls.¹⁷¹

44. *Default Routing.* In the *988 Georouting Second Further Notice*, we sought comment on whether 988 calls with unreadable routing data would default to routing by area code or be redirected to a national back-up center.¹⁷² The record demonstrates that, while the benefits of georouting for 988 calls are clear, it is critical that callers still have access to the Lifeline's vital services if georouting data is unavailable or unreadable.¹⁷³ CX360, a service provider that contracts with the Lifeline Administrator to provide voice and SMS-based information services after calls reach the Lifeline, explains that the Lifeline's IVR system has "built-in backup routing logic that routes the call based on the caller's area code."¹⁷⁴ Several commenters that addressed this issue support defaulting to routing by area code and exchange when georouting data is unreadable.¹⁷⁵ We agree, and we view retaining the centralized routing process will enable the Lifeline to route callers to crisis centers based on area code and exchange in the event that georouting data is unavailable or unreadable, and such calls will not be disconnected.

G. Alternative Georouting Solutions

45. We emphasized in the *988 Georouting Second Further Notice* that we believe implementing a georouting solution without delay to connect callers to 988 with geographically appropriate crisis call centers provides better care.¹⁷⁶ With this urgency in mind, we sought comment on the feasibility of requiring alternative georouting solutions that have not yet been tested, developed, or presented to SAMHSA or the Lifeline Administrator and asked whether such solutions would expedite or slow deployment of georouting.¹⁷⁷ After reviewing the record, we decline, at this time, to adopt commenters' alternative georouting proposals that would bypass the Lifeline's centralized routing system or require CMRS providers to route directly to crisis centers. Several commenters argue that the Commission should consider adopting rules that allow routing of 988 calls directly to NG911 networks upon request from states that can manage 988 calls directly and have defined "geospatial boundaries" for 988 crisis centers.¹⁷⁸ Intrado Life & Safety asks the Commission to adopt rules that support direct routing

¹⁷⁰ See CTIA Reply at 4-5 (noting that "[t]he nationwide providers' prompt implementation will enable the provision of georouting information for more than 98% of all wireless subscribers in the United States"); CCA Reply ("While non-IP networks and the challenges associated with roaming may impact how some calls are routed, the majority of calls will be properly routed with the solutions that nationwide providers are ready to deploy.").

¹⁷¹ Issues raised in the *988 Georouting Second Further Notice* that are not addressed in this *Third Report and Order* remain pending.

¹⁷² *988 Georouting Second Further Notice* at *9, para. 23.

¹⁷³ See, e.g., CX360 Comments at 2 ("While area-code based routing is an imperfect means of routing calls, it has provided a mechanism to allow the 988 Lifeline to assist millions of help seekers without overloading 988 Lifeline resources."); see also MAMH Comments at 3 (asking "[w]ill there be measures in place for emergency situations when system failures make georouting impossible (such as if local cell towers are not functioning?)").

¹⁷⁴ See CX360 Comments at 2, 9.

¹⁷⁵ NAMI Comments at 3 ("In these instances where a technological glitch prevents calls from being directed to the closest call center, NAMI recommends that such calls be routed based on the area code of the callers' phone number, similar to the current process and the process for directing calls from landlines to 988."); Washington State DOH Comments at 2 ("Routing by area code, while imperfect, would at least result in a connection to the closest crisis center some of the time.").

¹⁷⁶ *988 Georouting Second Further Notice* at *1, *5, *11, paras. 2, 13, 27.

¹⁷⁷ *Id.* at *11, para. 27.

¹⁷⁸ See Cal OES Comments at 5, 7; Ohio Department of Mental Health and Addiction Services Comments (Express).

of 988 calls to “state-designated IP Protocol (IP) points of interconnection (POI),” such as the “Emergency Services IP Network (ESInet)” in alignment with Next Generation 911 (NG911), upon request from a state.¹⁷⁹ Similarly, Comtech urges the Commission to adopt rules that provide “state 988 authorities the flexibility to develop their own direct, dedicated, IP-based 988 call paths and system architecture to meet their local needs.”¹⁸⁰ The National Emergency Number Association (NENA) also urges the Commission to consider the use of NG911 technologies to support georouting for 988 calls and argues that a 988 call should “be treated as an emergency call.”¹⁸¹

46. We do not adopt these proposals at this time as we work to expeditiously improve routing for 988 calls within the 988 Lifeline’s system.¹⁸² In the *988 Georouting Second Further Notice*, we stated that the ultimate goal of the coordination between SAMHSA, the Lifeline Administrator, and the Commission was to identify one or more georouting solutions that are compatible with the 988 Lifeline’s system and achieve the policy objectives of connecting callers in crisis with local support.¹⁸³ We further stated that our goal was to build on the progress made by all stakeholders to identify a georouting solution to enhance the support and resources available to callers in crisis.¹⁸⁴ The record reflects support for this approach.¹⁸⁵

47. We are also concerned that implementing a localized routing model at this time would be contrary to our goal of ensuring that georouting is available without delay to connect the majority of callers to 988 with geographically appropriate crisis centers that enhance the services available to those in crisis.¹⁸⁶ CTIA asserts that proposals that require modification of the centralized routing process for 988 calls are inconsistent with the georouting solutions that have been developed by the nationwide wireless providers, major stakeholders, SAMHSA, and the Lifeline Administrator.¹⁸⁷ The Lifeline Administrator and CX360 point to necessary infrastructure changes that could delay implementation of georouting solutions.¹⁸⁸ Additionally, the Lifeline Administrator states that “reliance on technologies, such as NG911, can impact the ability . . . to carry out its duties as Administrator, including responsibility for routing of contacts to the 988 Lifeline.”¹⁸⁹ Overall, we do not have the full and detailed record necessary

¹⁷⁹ See Intrado Life & Safety Comments at 1, 6-8.

¹⁸⁰ Comtech Comments at 3.

¹⁸¹ NENA Comments at 1; see also NASNA Reply at 2 (stating that “there are technologies inherent within NG911 that can and should be taken in consideration as 988 evolves”).

¹⁸² Nevertheless, recognizing the importance of developing solutions capable of connecting callers to the most geographically appropriate resources, we encourage parties to continue exploring alternative localized georouting solutions.

¹⁸³ *988 Georouting Second Further Notice* at *10, para. 25.

¹⁸⁴ *Id.* at *5, para. 13.

¹⁸⁵ See, e.g., CX360 Comments at 3, n.8; Vibrant Comments at 3; CX360 Sept. 26, 2024 *Ex Parte* at 1-2 (noting that “CX360 explained how its georouting solution, as opposed to a decentralized approach, builds on nearly a decade of experience providing services to, and fine-tuning those services for, the 988 Lifeline”).

¹⁸⁶ AT&T Reply at 4 (cautioning that Comtech’s proposed alternative georouting solution would “allow for a potential wide array of solutions and technologies, and introduce uncertainty”); see also CTIA Oct. 9, 2024 *Ex Parte* at 1-2.

¹⁸⁷ CTIA Reply at 8; see also AT&T Reply at 3-4 (cautioning that Comtech’s proposed alternative georouting solution “would deviate from the collaborative, consensus-based approach between stakeholders that has worked so well”).

¹⁸⁸ Vibrant Comments at 5 (arguing that alternative georouting solutions “would require a complete infrastructure change which would cause significant delay”); CX360 Reply at 4 (agreeing with Vibrant).

¹⁸⁹ Vibrant Reply at 8.

to adopt a rule that requires providers to bypass the existing centralized routing system, and we find that doing so would jeopardize the important next step that we are taking by implementing georouting as soon as possible.

48. We decline NENA's request to establish an expiration date for mandatory georouting requirements.¹⁹⁰ NENA emphasizes the potential benefits of implementing georouting solutions for wireless 988 calls that leverage NG911 technologies.¹⁹¹ While parties claim that NG911 technology could provide benefits for georouting calls to the 988 Lifeline, those benefits do not negate the current need for the requirements that we adopt in this *Third Report and Order*. Given the significant public interest benefits of supporting georouting for wireless 988 calls, we decline to set an end date for our rules, but we may consider further technological developments in the future.

H. Implementation Time Frame for Georouting 988 Calls to the Lifeline

49. Recognizing the urgency of the need to continue the Commission's work to provide meaningful access to the 988 Lifeline, we sought comment in the *988 Georouting Second Further Notice* on the appropriate timeline for deployment of a georouting solution, and specifically asked commenters to identify technical, financial, operational, legal, or other factors that could influence a mandated time frame.¹⁹² Thanks in large part to the work of SAMHSA and nationwide CMRS providers to date, the record indicates that implementation of solutions for sending georouting data along with wireless calls is attainable in the near term.¹⁹³ We therefore establish an implementation time frame following the effective date of the georouting rule of 30 days for nationwide CMRS providers and 24 months for all non-nationwide CMRS providers. As we define them above, nationwide CMRS providers are those providers whose service extends to a majority of the population and land area of the United States. Non-nationwide CMRS providers include all CMRS providers other than a nationwide CMRS provider.¹⁹⁴

50. The implementation time frame we provide nationwide CMRS providers corresponds to these providers' own solution-completion timelines.¹⁹⁵ T-Mobile, for example, began sending georouting information to the 988 Lifeline even before the publication of our rules and has since announced that its customers now "have their calls routed to crisis centers close to their actual location."¹⁹⁶ All three nationwide providers have implemented, or are in the process of implementing, their georouting solutions for wireless 988 calls.¹⁹⁷ Consistent with these expectations, we find sufficient a 30-day period after the effective date of our rules to require nationwide CMRS providers to begin sending georouting data with wireless 988 calls. Establishing such a time frame represents a critical first step toward ensuring that callers—a vast majority of whom subscribe to a nationwide CMRS provider¹⁹⁸—will be routed to a geographically appropriate call center.

¹⁹⁰ NENA Comments at 7 ("NENA supports the Commission's proposals for georouting of 988 calls—provided there is an expiration date.").

¹⁹¹ *Id.* at 7-8.

¹⁹² See *988 Georouting Second Further Notice* at *10, para. 26.

¹⁹³ See CTIA Reply at 1, 4 (naming AT&T, T-Mobile, and Verizon as all "actively working . . . to expeditiously implement georouting solutions for end-to-end IP-based wireless 988 calls").

¹⁹⁴ See Appx. A (new 47 CFR § 52.202(d)).

¹⁹⁵ See CTIA Reply at 1, 4.

¹⁹⁶ See T-Mobile Reply at 3 ("T-Mobile anticipates that it will begin providing georouting information to the Lifeline beginning the week of August 5, 2024, a week after the close of reply comments."); T-Mobile Sept. 25, 2024 Press Release.

¹⁹⁷ See *supra* note 32.

¹⁹⁸ See, e.g., CTIA Reply at 4-5.

51. Simultaneously, we conclude that 24 months provides sufficient time for non-nationwide CMRS providers to begin sending georouting information to the 988 Lifeline. Commenters agree that non-nationwide CMRS providers require more time to implement a georouting solution.¹⁹⁹ For example, Intrado Life & Safety proposes that their solution could be completed within a year but acknowledge that additional time may be needed for non-nationwide CMRS providers.²⁰⁰ We find that 24 months strikes an appropriate balance between giving these providers the necessary time to come into compliance and the pressing need to expeditiously connect callers to a geographically appropriate call center.²⁰¹ A 24-month period for implementation, as noted by CCA and Southern Linc, also accords with our decision to give providers 24 months to implement location-based routing for 911 call solutions.²⁰²

52. RWA asserts that small rural CMRS providers lack the resources to implement a georouting solution before 36 months.²⁰³ Although we understand RWA's contention that a lack of funding and personnel comparable to the nationwide providers warrants additional time for small rural CMRS providers,²⁰⁴ RWA has not demonstrated the need for the additional 12 months beyond the two years we are providing.²⁰⁵ Recognizing that their 36-month recommendation exceeds the 24 months that were given for 911 location-based call solutions to be implemented, RWA contends that with 911, "large nationwide CMRS providers had already begun implementing location-based solutions, which was an influential factor in . . . adopting a shorter implementation timeline," but that "[i]n this case, such early implementation has not occurred."²⁰⁶ RWA argues then that the "untested nature of the available 988 georouting solutions and lack of real-world implementation by *any* CMRS provider" merits an additional 12 months for implementation of a georouting solution.²⁰⁷ Yet, as observed above, nationwide CMRS providers have implemented or are in the process of implementing their georouting solutions.²⁰⁸ And RWA does not otherwise justify their recommended timeline of 36 months, which—at minimum—adds two years beyond the time frames cited as necessary by existing proposals that account for small CMRS providers.²⁰⁹ Additionally, we note that the Commission previously established a uniform 24-month implementation time frame for 988 itself, which involved implementing 10-digit dialing in 87 area codes as well as reprogramming, translating, or replacing telephone switches that would not otherwise support

¹⁹⁹ See, e.g., *id.* at 7; Intrado Life & Safety Comments at 5.

²⁰⁰ Intrado Life & Safety Comments at 6.

²⁰¹ LA County DOMH Comments at 2; NAMI Comments at 2, 4.

²⁰² See CCA Reply at 5-6; Southern Linc Reply at 4-5.

²⁰³ RWA Reply at 1.

²⁰⁴ *Id.* at 1, 3-6 (arguing that a longer time frame of 36 months is needed to mitigate the unique costs of compliance small rural CMRS providers grapple with); see also Southern Linc Reply at 5-6 (sharing "RWA's concern that twenty-four months may not be sufficient and that an additional twelve months may be required to allow non-nationwide providers to fully evaluate and implement 988 georouting on their networks").

²⁰⁵ RWA Comments at 6.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See *supra* note 32.

²⁰⁹ Intrado Life & Safety Comments at 6; see also T-Mobile Comments at 7 (highlighting that its discussed solution "will be readily available for adoption by smaller carriers"). INCOMPAS also argues, and CTIA agrees, that additional time would be needed—up to four years—for sending georouting information with text messages. INCOMPAS Comments at 4; CTIA Reply at 7. However, as we do not mandate that text messages send georouting information at this time, we need not address this argument. See *infra* Section IV, *Third Further Notice of Proposed Rulemaking* (proposing to require covered text providers support georouting to ensure that the 988 Lifeline may route covered 988 text messages to the appropriate local crisis center).

988 as a three-digit dialing code.²¹⁰ We do not anticipate, by comparison, that implementation of a georouting solution will prove more burdensome. It is our predictive judgment that 24 months accounts for the technical and cost-related challenges non-nationwide CMRS providers will face in implementing this lifesaving change to the 988 system.

I. Routing Voice Calls and Texts to 988

53. In the *988 Georouting Second Further Notice*, we asked whether our existing 988 voice²¹¹ and texting²¹² rules should be broadened to allow for implementing a georouting solution.²¹³ We conclude that it's appropriate to revise these rules to permit routing to the national suicide prevention and mental health crisis hotline system²¹⁴ without need for translation to the toll free access number. In so doing, we better futureproof the use of 988, including by enabling georouting solutions that may require broader routing parameters. In making these changes, we also codify our 2022 waiver order permitting covered text providers to route covered 988 text messages to the 988 Lifeline without translation to the toll free number.²¹⁵ We previously acknowledged that "as implementation has progressed, providers have found that, in practice, translating 988 text messages to the current toll free access number for the Lifeline . . . may negatively impact the experience of individuals texting the Lifeline."²¹⁶ Problems identified as arising from the current requirement included potential confusion when a number different than 988 appears on an individual's device when receiving responses, possibly resulting in delayed, frustrated, or abandoned efforts to seek help.²¹⁷ Our revisions today provide greater flexibility so as to avoid any similar such problems.²¹⁸

54. We do not adopt iCERT's proposal to amend our rule to require providers to route directly to a state or local 988 call center.²¹⁹ The amendment we adopt today resolves the issues identified above without potential delay to the implementation of georouting solutions. We therefore decline at this time to adopt alternative approaches that would bypass the Lifeline's centralized routing platform.²²⁰

J. Legal Authority

55. As we tentatively concluded in the *988 Georouting Second Further Notice*,²²¹ we find that Title II and Title III of the Communications Act of 1934, as amended (Act), provide us with the authority to adopt the rules we promulgate today. The Supreme Court has previously recognized that Title III grants the Commission a "comprehensive mandate" in regulating spectrum usage,²²² and lower courts

²¹⁰ *988 Report and Order*, 35 FCC Rcd at 7403-04, paras. 55-57.

²¹¹ 47 CFR § 52.200.

²¹² *Id.* § 52.201.

²¹³ *988 Georouting Second Further Notice* at *12, para. 29.

²¹⁴ 47 U.S.C. § 251(e)(4).

²¹⁵ *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, 37 FCC Rcd 6060 (WCB 2022) (*Text-to-988 Waiver Order*).

²¹⁶ *Id.* at 6061, para. 4.

²¹⁷ *Id.*

²¹⁸ Individuals will still be able to dial the toll free ten-digit access number to reach the 988 Lifeline.

²¹⁹ Letter from George Kelemen, Executive Director, Industry Council for Emergency Response Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336 (filed Sept. 12, 2024).

²²⁰ *Supra* paras. 31-33.

²²¹ *988 Georouting Second Further Notice* at *13, para. 32.

²²² *See Nat'l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943).

have routinely determined that Title III confers broad authority to manage spectrum in the public interest.²²³ Consistent with these decisions, we find significant public interest benefits will likely inure as a result of our georouting mandate by connecting individuals in crisis with geographically appropriate public safety and counseling resources.²²⁴

56. In the *988 Georouting Second Further Notice*, we asked whether section 251(e), which provides the Commission its numbering authority,²²⁵ acts as an additional source of authority. Section 251(e)(4), specifically, designates 988 as the universal telephone number for the national suicide prevention and mental health crisis hotline system.²²⁶ We agree with commenters that our authority extends to mandating that a georouting solution be implemented.²²⁷ We also agree with commenters that in so doing, we further the goals of previous congressional directives, including to adopt regulations that will ease access to suicide prevention and mental health services.²²⁸ In mandating that a georouting solution be implemented and in modifying our voice and text routing rules, we thus exercise our numbering authority pursuant to Congress's direction and therefore find that 251(e) provides us authority to promulgate the rules we adopt today.

K. Benefits and Costs of 988 Georouting

57. By reducing the geographic mismatch between caller locations and area codes and moving 988's life-saving interventions closer in time and space to those in distress, georouting will generate mortality-reduction and other benefits far exceeding implementation costs.

1. Benefits

58. *Reduced Suicide Mortality.* The number of Americans who are at risk of having their wireless 988 calls routed to a faraway 988 Lifeline call center is vast. Approximately 80% of calls to 988 are from wireless devices.²²⁹ In a mobile society where people hold on to familiar wireless phone numbers, there is often no connection between the geographic origins of 988 calls and the area codes of the callers' phone numbers.²³⁰ According to a study conducted by Pew Research Center, "each year about 36 million Americans move residences and nearly half of adults living in urban areas have a cellphone

²²³ See, e.g., *Cellco v. FCC*, 700 F.3d 534, 537 (D.C. Cir. 2012).

²²⁴ See, e.g., AT&T Reply at 1-2 (agreeing with statements made in the *988 Georouting Second Further Notice* about the importance of connecting individuals in crisis to local resources); CTIA Reply at 1 (observing that commenters in the record "agree that georouting data for wireless calls will improve the 988 Lifeline's ability to" save lives); INCOMPAS Comments at 1 ("Interconnected VoIP providers recognize the life-saving value in being able to connect their subscribers to 988 call centers and have worked with diligence and intention to incorporate this functionality into their service."); Reimagine Crisis Response Comments at 2 ("In addition to legal authority, we also believe that there is a significant benefit to the public interest. The need for and benefit to someone being able to easily connect to their local crisis system of care through 988 cannot be overstated. As we have stated before, a change to georouting will save lives."); RWA Comments at 2 (recognizing that mandating georouting information "serves the public interest" by better connecting individuals to "potentially . . . life-saving resources").

²²⁵ 47 U.S.C. § 251(e).

²²⁶ *Id.* § 251(e)(4).

²²⁷ See, e.g., NAMI Comments at 4-5 (NAMI "strongly support[s] the FCC's tentative conclusion that it has the legal authority under Title II and Title III"); Reimagine Crisis Response Comments at 2 ("We believe that the FCC has the legal authority to require the industry to implement georouting solutions for the 988 Lifeline.").

²²⁸ Vibrant Comments at 5; see also LegalMind Society Comments at 3 (arguing that Congress, by directing the Commission to report on the feasibility of providing a dispatchable location, evinced a long-term goal of mandating that georouting information be sent); NCMW Comments at 2 (highlighting various pieces of federal legislation indicating Congress's interest in the proposals found in the *988 Georouting Second Further Notice*).

²²⁹ John Draper Comments at 1; CTIA Comments at 1; MAMH Comments at 1.

²³⁰ NACO Comments at 1.

number from somewhere else.²³¹ Additionally, nationwide at least 10% of all adult Americans have a cellphone number from somewhere other than where they reside.”²³² While we recognize that 988 is a critical resource of growing importance for younger people,²³³ for the purposes of our analysis we focus on all adults, that is, individuals 18 years or older.

59. We use a three-step process to estimate reduced suicide mortality risk. First, we identify suicide victims who could have tried to summon 988 assistance and been misrouted. After the launch of 988 on July 16, 2022, a total of 2,395 American adult suicide victims 18 and older could have sought a 988 emergency intervention but had cellphone numbers prone to misrouting.²³⁴ Polling results tell us that 431 (i.e., 18% of 2,395) of these suicide victims could have been aware of 988 and possibly called.²³⁵ Second, we identify those victims subject to possible emergency-response delays: Nearly 13 (i.e., 3% of 431) would have required the sort of immediate and follow-up care that could be more effectively provided by georouting 988 calls to the locality in which the caller resides without revealing the caller’s precise location or otherwise compromising their privacy.²³⁶ We estimate that 2.2 (i.e., 17% of 13) of these suicides could have been avoided by 988 georouting. Our rationale is that wireless call misrouting is suboptimal: localities have first-responder and follow-up resources tailored to local settings and circumstances to optimize their effectiveness; such resources can often only be deployed by local crisis centers.²³⁷ The delays, frictions, and mismatches triggered by misrouting increase response time, and every minute saved in a suicide intervention reduces suicide mortality.²³⁸ The Commission previously

²³¹ Centerstone Comments at 2; LA County DOMH Comments at 2 (citing Pew Research Ctr., *Moving Without Changing Your Cellphone Number: A Predicament for Pollsters* (2016), <https://www.pewresearch.org/methods/2016/08/01/moving-without-changing-your-cellphone-number-a-predicament-for-pollsters/>).

²³² *Id.*

²³³ Vibrant Emotional Health, *CDC Data Brief on Mental Health in Youth and Young Adults* (June 15, 2023), <https://www.vibrant.org/cdc-data-brief-on-mental-health-in-youth-and-young-adults/> (“The 988 Lifeline data from May 2023 showed an increase in overall volume compared to May 2022.”); U.S. Department of Health and Human Services, *Now in Its Second Year, 988 Lifeline Continues to Help Millions of People* (July 16, 2024), <https://www.hhs.gov/about/news/2024/07/16/second-year-988-lifeline-continues-help-millions-people.html> (“Since the expansions of services, 988 counselors have answered . . . more than 475,000 LGBTQI+ youth and young adult texts, calls, and chats . . .”).

²³⁴ Total suicides for adults 18 years or older in 2022 were 47,891 (CDC WISQARS database query, <https://wisqars.cdc.gov/reports/?o=MORT&y1=2001&y2=2022&t=0&i=2&m=20810&g=00&me=0&s=0&r=0&ry=0&e=0&yp=65&a=custom&g1=0&g2=199&a1=18&a2=85&r1=INTENT&r2=YEAR&r3=NONE&r4=NONE>). If we allocate by months, then there were ~23,946 in the latter half of the year (i.e., 6/12=0.5). We can alternatively allocate by total suicides for July-December (i.e., 24,742/49,746=0.500008085), which gives the same result (these totals were derived from the monthly estimates for suicides given in CDC, *Fatal Injury Trends*, <https://www.cdc.gov/injury/wisqars/fatal/trends.html>).

²³⁵ Kaiser Family Foundation polling indicates that as of mid-2023, only 18% of adults reported familiarity with 988. See Heather Saunders, *988 Suicide and Crisis Lifeline: Two Years After Launch*, Kaiser Family Foundation, published July 29, 2024, <https://www.kff.org/mental-health/issue-brief/988-suicide-crisis-lifeline-two-years-after-launch/>.

²³⁶ According to the Crisis Text Line, “[a]pproximately less than 3% of all 988 contacts resulting (sic) in an emergency services intervention that requires local support.” Crisis Text Line Comments at 2.

²³⁷ Local centers “frequently have dispatch and referral arrangements with mobile crisis teams and MOUs with nearby 911 PSAPs, emergency departments and law enforcement.” John Draper Comments at 2. For example, Los Angeles County residents connected to an out-of-area call center will likely not be connected to a specially trained Field Intervention Team that can be deployed to the caller’s location or receive other needed resources. See LA County DOMH Comments at 1-2.

²³⁸ LegalMind Society provides the example of two of its board members whose mismatched area codes render them “unable to receive the proper local information and resources that could mean the difference between life and death.” LegalMind Society Comments at 3. The Michigan State 911 Committee states, “[t]he current system of
(continued....)

estimated that a one-minute reduction in emergency-response time reduces mortality by 17%.²³⁹ Thus, while the rules promulgated today do not impose a dispatchable location requirement—that is, a caller’s exact location cannot be identified—by connecting callers to geographically appropriate crisis centers, we anticipate that better response times, and the benefits thereof, will result. Third, we estimate that Americans would have been collectively willing to pay \$27.5 million annually and nearly \$130 million over a five-year period for a mortality-risk reduction of this size.²⁴⁰

60. *Other Benefits and Possible Benefits Underestimation.* Our estimate of \$120 million in benefits over five years is an underestimate because it excludes youth age 17 and under, who rely heavily on wireless devices²⁴¹ and 6,542 of whom committed suicide in 2022. In addition, suicide attempts—more broadly acts of self-harm—demand medical treatment, put people out of work, and diminish survivors’ quality of life. Yet, we have not estimated the savings from reduced medical expenses, lost work, and lost quality of life. We also do not count the benefits of less property damage attributable to suicide attempts and savings of 988 Lifeline call center resources from fewer misrouted calls. In addition, misrouted 988 callers often resort to calling 911. A reduction in these calls would likely save further costs.²⁴² Lastly, we have neglected to estimate the devastating emotional toll 988 wireless call georouting would spare suicide victims’ families, friends, and communities.

2. Costs

61. We estimate that the implementation costs of georouting 988 wireless calls will be relatively small. RWA claims “RWA carrier members, all of whom are small rural non-nationwide CMRS providers, estimate that 988 georouting solutions could cost them at least \$50,000 for implementation and over \$15,000 per month for third-party services, not including continual labor costs for testing. Such a cost is an immense burden for a small rural non-nationwide CMRS provider.”²⁴³ Some commenters propose cost-effective 988 routing solutions: CX360 that “[t]here are no incremental service costs to wireless providers for CX360’s georouting solution beyond the initial development expense for call header configuration by each wireless provider. All other parties in the existing 988

(Continued from previous page) —————
routing 988 calls . . . creates confusion and delays in providing necessary life-saving help to those who call 988 but are actually in need of emergency services.” Michigan State 911 Committee Comments at 1. *See also* John Draper at Comments at 3; Centerstone Comments at 2; Comtech Comments at 3; MHA Comments at 1; NACO Comments at 1; Teri Meider Comments at 1; Vibrant MHLG Comments at 1.

²³⁹ *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4, at 52, para 118 (citing *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, 37 FCC Rcd 15183, 15206-07, para. 61 & n. 161 (2022) (*911 Notice of Proposed Rulemaking*)).

²⁴⁰ Using a recent Value of Reduced Mortality Risk (VRMR) of \$12.5 million, a mortality-risk reduction equivalent to 2.2 lives is worth $2.20 \times \$12,500,000 = \$27,500,000$. *See 911 Notice of Proposed Rulemaking*, 37 FCC Rcd at 15207-08, para. 62 & n.162 (citing U.S. Department of Transportation, *Departmental Guidance on Valuation of a Statistical Life in Economic Analysis* (Mar. 4, 2022) (later updated May 1, 2023), <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>). The present value of five annual payments discounted at 2% according to OMB Circular A-4 is \$129,620,136.

²⁴¹ Studies indicate 53% of children in the United States have a smartphone by age 11, with over 95% of teens between 13 and 17 years of age having access to a cellphone. *See* Allen Richter, Victoria Adkins, and Ellen Selkie, Youth Perspectives on the Recommended Age of Mobile Phone Adoption: Survey Study, *JMIR Pediatric Parent*, 2022 Oct-Dec; 5(4): e40704, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9664330/#:~:text=Mobile%20phone%20adoption%20in%20the,a%20cell%20phone%20%5B2%5D>.

²⁴² Tania Donna Morawiec (Express).

²⁴³ RWA Comments at 2.

Lifeline call flow are already configured to support this model.”²⁴⁴ Vibrant indicates that “[t]he georouting solution developed in conjunction with Vibrant’s partners for the 988 Lifeline telephony infrastructure and major wireless providers represents the preferred solution that would allow real-time routing updates without the creation of an entirely new 988 Lifeline framework and architecture. This solution would be cost-effective not only for the 988 Lifeline but for providers as well and is able to be deployed faster than other proposed solutions.”²⁴⁵ In the nearer term, “nationwide wireless providers AT&T, T-Mobile, and Verizon have achieved consensus with the Lifeline Administrator, Vibrant, on the contours of georouting solutions and are working to implement them as quickly as practicable.”²⁴⁶ The georouting solutions rely on geographic information associated with call origination, such as the cell-site identification number, which the provider can translate into a county identifier.²⁴⁷ Based on the record, we conclude that cost-effective 988 wireless call georouting solutions exist in theory and in practice. To minimize their financial burden, non-nationwide wireless providers facing greater financial constraints have been granted a full 24 months to find and implement a solution.

L. Additional Proposals

62. We appreciate the opportunity, as the expert regulatory agency on telecommunications in the United States, to help facilitate access to the 988 Lifeline’s critical mental health and suicide prevention services. It is also important that we recognize the important role that our federal partners and others play in operating the 988 Lifeline. In response to the *988 Georouting Second Further Notice*, some commenters raised important issues that are more appropriately addressed by other parties or may fall outside the scope of this proceeding. We address these issues below and encourage interested parties to collaborate with our federal partners at SAMHSA and the VA, along with other stakeholders, to continue their efforts in enhancing the effectiveness of the 988 Lifeline.

63. *Transparency.* Several commenters emphasized the importance of transparent communication and education about how georouting data is used for wireless 988 calls.²⁴⁸ For example, NAMI asserts that transparency regarding the use of georouting data will help “build trust in the 988 Lifeline” and alleviate fears about sharing location information, which may have resulted from factors such as a “historic distrust” of emergency response systems or misinformation about the use of such data.²⁴⁹ The Electronic Privacy Information Center (EPIC) also argues that transparently acknowledging the harms of non-consensual interventions for 988 callers can help mitigate “the chilling effects of implementing mandated georouting on would-be 988 callers.”²⁵⁰ We recognize the importance of transparent communication and believe that the Commission’s website, together with continued collaboration with our federal partners at SAMHSA, will serve as a valuable means of consumer education. We also expect that relevant 988 stakeholders will help contribute to these educational efforts.

²⁴⁴ CX360 Comments at 12.

²⁴⁵ Vibrant Comments at 4-5.

²⁴⁶ CTIA Comments at 4.

²⁴⁷ *Id.* at 6.

²⁴⁸ *See, e.g.*, NCMW Comments at 3 (urging the Commission to provide “guidance and public awareness resources to states and localities with clear information on how georouting will maintain caller confidentiality and improve access to appropriate services”); Washington State DOH Comments at 1 (stating that “transparent communication to the public regarding precisely what georouting does and does not accomplish would be essential to avoiding any negative impacts on usage due to concerns about compromised confidentiality”).

²⁴⁹ NAMI Comments at 3.

²⁵⁰ EPIC Reply at 2, 17; *see also* Jennifer Randal-Thorpe Comments at 1 (Express) (describing police intervention and “a severe breakdown in communication” during a 988 call).

64. EPIC also urges the Commission to be transparent about the actions taken in the rare instances when a 988 call is transferred to 911.²⁵¹ The Lifeline Administrator states that “[i]n rare situations, a 988 crisis counselor may contact a public safety answering point dispatcher because of concerns about an immediate risk of life, pursuant to the 988 Lifeline Suicide Safety policy.”²⁵² While we recognize harms can occur from a non-consensual interventions,²⁵³ the georouting requirements we adopt today apply only to CMRS providers routing calls to the 988 Lifeline, which is distinct from the functions performed by the Lifeline Administrator or individual crisis centers after the Lifeline receives the calls.²⁵⁴

65. *988 Lifeline Funding and Services.* We also received comments regarding the need for adequate funding to ensure that the 988 Lifeline and crisis centers can effectively support georouting, as well as other recommendations that commenters claim would improve the general effectiveness of the 988 Lifeline.²⁵⁵ While these recommendations fall outside of our jurisdiction, we note that our federal partners at SAMHSA are “planning for anticipated operational, training and procedural updates [that] will require active engagement with partners including states, territories, tribes and crisis centers.”²⁵⁶ We also encourage stakeholders to work with Congress to ensure appropriate funding for the 988 Lifeline.

66. *911 Interoperability.* We received several comments urging the Commission to consider issues pertaining to the interoperability between the 988 Lifeline and 911 services.²⁵⁷ For example, NENA argues that “988 must technically and operationally interoperate with [911] and first responder

²⁵¹ EPIC Reply at 16; *see also* SAMHSA, *988 Frequently Asked Questions, If I call 988, will first responders (like the police or EMS) be dispatched?*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Sept. 18, 2024) (“Currently, fewer than two percent of Lifeline calls require a connection to emergency services like 911.”).

²⁵² Vibrant Comments at 6; Vibrant Reply at 3-4; *see also* Vibrant, *988 Suicide and Crisis Lifeline Suicide Safety Policy* (Dec. 27, 2022), https://988lifeline.org/wp-content/uploads/2023/02/FINAL_988_Suicide_and_Crisis_Lifeline_Suicide_Safety_Policy_-3.pdf.

²⁵³ EPIC Reply at 17 (noting additional harms that can occur from non-consensual intervention include “a caller’s loss of autonomy and possibly their freedom (not to mention the bill for the unwanted emergency services), [and] the longer-lasting effects from the caller experiencing such trauma”).

²⁵⁴ The Commission has had no role in establishing, maintaining, or operating the 988 Lifeline’s routing system or the facilities and systems that enable it, and is not a party to any agreement that the Lifeline Administrator and/or SAMHSA has entered to establish, structure, operate, govern, or fund the system.

²⁵⁵ *See, e.g.*, NCMW Comments at 3 (stating that “[a]n overall issue that is critical to ensuring such requirements ultimately have the intended benefit for callers across our nation is the need to ensure that call centers and provider organizations that furnish crisis care, postcrisis services, and prevention supports are funded appropriately and adequately”); NPAIHB Comments at 2 (requesting funding to “develop additional [American Indian and Alaska Native] culturally-sensitive crisis centers”); Trevor Project Comments at 4 (describing “the infrastructure needed to support the growing demand for LGBTQ+ subnetwork competent crisis support” and the required “hiring [of] additional staff who are well-trained in LGBTQ+ youth competency”); UPMC Comments at 3 (recommending “a provision that funds made available to centers be re-evaluated based on how volumes may evolve with georouting”).

²⁵⁶ SAMHSA Aug. 5, 2024 Letter at 2.

²⁵⁷ *See, e.g.*, Cal OES Comments at 5 (urging the Commission to consider location-based routing (LBR) technology that “leverages [NG911] capabilities and ensures that 9-8-8 services and 9-1-1 services have increased interoperability”); Comtech Comments at 8 (arguing that “988 calls must be . . . interoperable with 911 public safety answering points”); MAMH Comments at 2 (asking whether georouting rules “contemplate steps to promote 911 and 988 integration and the promotion of 911 referrals to 988”); Ohio MHAS Comments at 1 (Express) (emphasizing the importance of the interoperability between 911 and 988 system); NASNA Reply at 2 (arguing that “it will be essential that as future 988 systems evolve they will need to successfully interoperate with NG911 when there is a crisis that requires an escalated response”); NENA Comments at 2 (arguing that “988 must technically and operationally interoperate with 9-1-1 and first responder operations to meet the Commission’s goal of saving American lives”).

operations.”²⁵⁸ Similarly, the National Association of State 911 Administrators (NASNA) argues that as the 988 system evolves, successful interoperability with NG911 will be essential “when there is a crisis that requires an escalated response.”²⁵⁹ We agree with commenters that facilitating interoperability between 988 and 911 services is an important goal, however these proposals are beyond the scope of this proceeding, and we decline to address them further here. We also note that the Lifeline Administrator is currently “involved in ongoing efforts at the local, state, and national levels” to address the interoperability between 988 and 911 services.²⁶⁰ We, therefore, encourage stakeholders to collaborate with our federal partners.

67. *Coordination with American Indian and Alaska Native Communities.* Northwest Portland Area Indian Health Board (NPAIHB) recommends that the Commission, SAMHSA, and wireless providers consult with Tribal communities to ensure that American Indian and Alaska Native communities are “able to utilize the 988 Lifeline and be connected to locally centralized suicide prevention and crisis service centers when using a wireless device.”²⁶¹ We support NPAIHB’s suggestion and believe connecting Tribal community members with local crisis centers is crucial to providing these communities with the meaningful help they need. As such, we stand ready to work with our federal partners and industry to assist American Indian and Alaska Native communities’ access the life-saving resources of the 988 Lifeline.

68. *Opt-Out, Website, and Call Disclosure Requirements.* We received comments urging the Commission to consider whether 988 callers will have the opportunity to opt out of sharing georouting data.²⁶² The Massachusetts Association for Mental Health (MAMH) and EPIC urge the Commission to “require 988 websites to indicate that georouting is used” and provide information about accessing the Lifeline’s national backup center or individual crisis centers.²⁶³ EPIC also argues that “disclosure about georouting and non-georouted alternatives needs to occur during a call.”²⁶⁴ To the extent that commenters raise concerns regarding disclosures about the use of georouting data on 988 websites or after the Lifeline’s centralized routing system receives a call, such issues address actions by entities that are beyond the scope of this proceeding. Additionally, the georouting rules we adopt today do not require wireless providers to transmit more precise geolocation information with wireless 988 calls, but rather require aggregated georouting data that maintains caller privacy in order to enhance the Lifeline’s routing mechanism. Therefore, we decline, at this time, to require wireless providers to include specific disclosures regarding the use of georouting data.

69. *Cost Recovery.* RWA argues that the Commission should “allocate funds to subsidize” implementation efforts by non-nationwide CMRS providers to comply with a georouting mandate.²⁶⁵ RWA further argues that small rural non-nationwide CMRS providers “cannot pass the costs of 988 georouting compliance onto their customers without jeopardizing their [Universal Service Fund]

²⁵⁸ See NENA Comments at 2.

²⁵⁹ NASNA Reply at 2.

²⁶⁰ Vibrant Reply at 6.

²⁶¹ NPAIHB Comments at 3.

²⁶² MAMH Comments at 2 (asking whether a 988 caller will “receive notice of georouting when they place the call and/or have the opportunity to opt out of georouting”); Washington State DOH Comments at 2 (“[H]elp seeker privacy must remain paramount, and safeguards must be in place to ensure that they are given opportunities to opt out of location sharing.”).

²⁶³ MAMH Comments at 2; EPIC Reply at 18.

²⁶⁴ EPIC Reply at 19.

²⁶⁵ RWA Comments at 2, 7.

support.”²⁶⁶ RWA’s cost estimates lack any specificity or detail for us to determine whether those costs, which are also provided in isolation, would indeed jeopardize their universal service support.²⁶⁷ Further, we did not propose any cost recovery mechanisms in the *988 Georouting Second Further Notice* and we will not adopt any here. As explained in the analysis of benefits and costs section, the benefits of implementing georouting for wireless 988 calls significantly outweigh the costs to CMRS providers.²⁶⁸ Moreover, the rules we adopt today are flexible and we encourage non-nationwide CMRS providers to develop the most cost effective georouting solution with the technical parameters set forth herein.

70. *Customer Proprietary Network Information (CPNI) and Third Party Vendor Issues.* EPIC asks the Commission to prohibit wireless providers from “sharing 988-related data even if the subscriber has opted in to sharing their CPNI” and to ensure that wireless providers and “their vendors meet basic cybersecurity requirements.”²⁶⁹ EPIC argues that the Commission has authority under section 222 of the Communications Act, as amended “to hold carriers responsible for safeguarding” CPNI.²⁷⁰ We agree that protecting the privacy and security of callers is imperative. The rules we adopt today make clear that wireless providers must aggregate location data generated from cell-based technology to a sufficiently granular level to maintain caller privacy.

IV. THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

71. Texting is an important mode of communication to the 988 Lifeline and is the preferred means of communicating among certain demographic groups, many of whom are at increased risk for mental health crises.²⁷¹ In this *Third Further Notice of Proposed Rulemaking*, we propose to require that covered text providers support georouting to ensure that the 988 Lifeline may route covered 988 text messages to the appropriate local crisis center to enhance the support and resources available to text users in crisis. We also tentatively conclude that, at a minimum, CMRS providers must support georouting for Short Message Service (SMS) text messages to 988. In addition, we propose that covered text providers be subject to requirements to send georouting data to the 988 Lifeline to the same extent that they are currently required to send covered 988 texts to the 988 Lifeline. These proposed requirements will build on the implementation of georouting for wireless 988 voice calls and ensure parity between texts and voice calls to 988.

A. Background

72. In 2021, the Commission adopted requirements for covered text providers to route covered 988 text messages to the 988 Lifeline.²⁷² The Commission’s goal in the 2021 *Text-to-988 Second Report and Order* was to make text-to-988 rapidly available nationwide to improve access to mental health resources,²⁷³ while balancing the need for covered text providers to flexibly choose the most

²⁶⁶ *Id.* at 3.

²⁶⁷ *Id.* at 2; RWA Reply at 6.

²⁶⁸ *See supra* Section III.K, Benefits and Costs of 988 Georouting.

²⁶⁹ EPIC Reply at 3, 11-14.

²⁷⁰ *Id.* at 12.

²⁷¹ *988 Georouting Second Further Notice* at *12, para. 31.

²⁷² *See Text-to-988 Second Report and Order*, 36 FCC Rcd at 16903, para. 2; *see also* 47 CFR § 52.201. The Commission defined “covered text provider” as including “all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.” *See* 47 CFR § 52.201.

²⁷³ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16922, para. 37.

effective method of compliance.²⁷⁴ The Commission defined “covered 988 text message” as “a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.”²⁷⁵ Currently, the Commission requires covered text providers to route covered 988 texts to the 988 Lifeline,²⁷⁶ but it does not require covered text providers to provide any additional information about the location of the text user.²⁷⁷ In the *988 Georouting Second Further Notice*, we sought comment on improving routing for 988 text messages.²⁷⁸

73. The Commission’s definition of “988 text message”²⁷⁹ sets the possible scope of text formats which covered text providers may be obligated to support for the delivery of 988.²⁸⁰ “Covered 988 text messages” are a subset of 988 text messages that are in SMS format or any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.²⁸¹ The Commission delegated to the Wireline Competition Bureau the authority to make future determinations to require covered text providers to support additional text formats in consultation with federal partners and in consideration of what text formats the 988 Lifeline is capable of receiving.²⁸² The Wireline Competition Bureau annually consults with SAMHSA on the implementation of any new texting formats to 988 and issues a Public Notice either announcing that no new texting formats are required or seeking comment on implementation parameters for covered text providers to transmit any additional text message formats to 988.²⁸³ The Wireline Competition Bureau then may, under delegated authority, release a Public Notice requiring covered text providers to implement text-to-988 for these additional text message formats and setting implementation dates.²⁸⁴ As part of its annual consultation with SAMHSA, the Wireline Competition Bureau has only applied text-to-988 requirements to the text formats that the 988 Lifeline currently supports.²⁸⁵ At present, the Wireline Competition Bureau only requires covered text providers to route 988 text messages in SMS format.²⁸⁶

²⁷⁴ *Id.* at 16927, para. 44.

²⁷⁵ 47 CFR § 52.201(c).

²⁷⁶ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16921-22, para. 36. Under the rules adopted in the accompanying *Third Report and Order*, texts to 988 must be delivered to the national suicide prevention and mental health crisis hotline system maintained by the Assistant Secretary for Mental Health and the Secretary of Veterans Affairs. *See supra* paras. 53-54.

²⁷⁷ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16922, para. 38.

²⁷⁸ *988 Georouting Second Further Notice* at *12, para. 31.

²⁷⁹ “Covered 988 text message” has a narrower meaning than “988 text message,” which “(i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number, N11 service code, or 988; (ii) includes and is not limited to a SMS message and a multimedia message service (MMS) message; and (iii) does not include—(A) a real-time, two-way voice or video communication; or (B) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in paragraph (b) [of section 52.201 of the Commission’s rules].” 47 CFR § 52.201(c).

²⁸⁰ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16910-11, paras. 16-17.

²⁸¹ 47 CFR § 52.201(c).

²⁸² *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16914, para. 22.

²⁸³ *Id.* at 16916-17, para. 25 & n.108.

²⁸⁴ *Id.* at 16916-17, para. 25.

²⁸⁵ *Id.*

²⁸⁶ *Wireline Competition Bureau Confirms No New Texting Formats For Text-to-988*, WC Docket No. 18-336, Public Notice, DA 24-536, 2024 WL 2954007 at *1 (WCB June 7, 2024) (*2024 WCB Text-to-988 Format Notice*); *see also Text-to-988 Second Report and Order* at 16914, 16915, paras. 22, 24.

B. Applicability of Georouting Proposed Rules to 988 Covered Text Providers

74. In this *Third Further Notice of Proposed Rulemaking*, we propose to require that covered text providers implement the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator and provide georouting data with covered 988 text messages to the Lifeline Administrator. We propose that the scope of this requirement be consistent with the scope of the existing requirement for covered text providers to deliver covered 988 text messages to the 988 Lifeline. As with the delivery requirement for covered 988 text messages, we also propose to limit the application of text-to-988 georouting requirements to the text formats that the 988 Lifeline supports. Given that the 988 Lifeline currently only accepts SMS text messages,²⁸⁷ this proposal would require covered text providers to implement georouting only for SMS text messages as an initial matter. Should the 988 Lifeline begin to accept other text formats in the future, we anticipate that there would be a similar need for georouting data for such additional text formats. Under our proposed approach, we would direct the Wireline Competition Bureau to consult with SAMHSA as to whether the 988 Lifeline can accept georouting data with any newly identified text formats as part of its annual consultation process and to seek comment on applying georouting requirements to any newly identified text formats in its annual Public Notice.²⁸⁸ We also propose to delegate authority to the Wireline Competition Bureau to require covered text providers to implement georouting for any new text formats and to set an implementation date that is as prompt as is reasonably practical. This flexible approach would allow the Commission to evaluate on an ongoing basis whether to apply georouting requirements to any new formats that the 988 Lifeline may become capable of receiving in the future.

75. Further, we tentatively conclude that at a minimum CMRS providers must support georouting for SMS text messages to 988. The record indicates that requiring CMRS providers to implement georouting for covered 988 text messages will support the 988 Lifeline's mission and save lives.²⁸⁹ In addition, we believe it is likely that CMRS providers originate a substantial majority of texts currently received by the 988 Lifeline. Georouting for SMS text messages originated by CMRS providers would represent a substantial improvement in the percentage of covered 988 texts arriving at the 988 Lifeline with georouting data. As discussed in the analysis of benefits and costs section, the benefits of implementing georouting for covered 988 text messages appear to significantly outweigh the anticipated costs to CMRS providers.²⁹⁰ These benefits include improved support for certain populations with an increased risk of suicide.²⁹¹ The record also suggests that it is technically feasible for CMRS providers to provide georouting data with texts to 988.²⁹² The ongoing use of coarse location routing for texts to 911

²⁸⁷ 2024 WCB Text-to-988 Format Notice at *1.

²⁸⁸ Text-to-988 Second Report and Order at 16916-17, para. 25.

²⁸⁹ Washington State DOH Comments at 2-3 (stating that georouting texts to 988 “would offer the same benefits to help seekers using text messages to reach 988 as it would for those calling: it would considerably expedite response times in highly time-sensitive crisis scenarios, allow the 988 counselor to contact the appropriate PSAP with far greater accuracy, offer the time-saving benefit of local knowledge of locations, and would help with development of preventive measures for individual regions”); Alex Kurth Comments at 1 (Express) (asserting that requiring georouting for texts in addition to calls “will significantly benefit children and young adults”).

²⁹⁰ See *infra* Section IV.F.

²⁹¹ Implementation of the National Suicide Hotline Improvement Act of 2018, WC Docket No. 18-336, Further Notice of Proposed Rulemaking, 36 FCC Rcd 7943, 7944, para. 1 (2021) (*Text-to-988 Further Notice*) (indicating that suicide disproportionately impacts teenagers, young adults, and deaf and hard of hearing individuals or individuals); *id.* at 7945, para. 2 (indicating that text messaging is especially popular with the same groups of individuals).

²⁹² CX360 Comments at 15 (stating that it “is proactively working with industry partners to develop a georouting solution for SMS”); Intrado Life & Safety Comments at 7, n.9 (“[S]everal wireless carriers and their vendors have already identified a solution that can utilize the existing 911 system with little modification to support text to 988.”).
(continued....)

strongly suggests that CMRS providers have such location information available for routing SMS text messages to 988.²⁹³

76. We seek comment on this approach and on our tentative conclusion. Should we instead limit the scope of the georouting rule language to one or more specific text formats, such as SMS, or to certain types of covered text providers, such as CMRS providers or covered text providers that have access to cellular networks?²⁹⁴ What are the benefits and drawbacks of each regulatory approach, and the impact to individuals that text the 988 Lifeline?

C. Definitions

77. In the text-to-988 georouting rules, we propose to include definitions of the terms “commercial mobile radio service,” “georouting data,” and “Lifeline Administrator” that were adopted in the accompanying *Third Report and Order*.²⁹⁵ We seek comment on our proposal. Are there any other terms that we should define or revise as they relate to the proposed georouting rules for covered text providers? We seek specific comment on how the proposed definition of “georouting data” impacts the text-to-988 georouting rules that we propose in this *Third Further Notice of Proposed Rulemaking*. The definition specifically applies to “location data generated from cell-based location technology.” For which covered text providers, and in which circumstances, would georouting data so defined be available? Should we adopt a definition of “georouting data” for the text-to-988 georouting rules that differs from the definition of this term for the georouting rules for voice calls to 988?

D. Text-to-988 Georouting Data

78. We propose to adopt and seek comment on a two-part requirement for covered text providers to: (1) have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format compatible with the Lifeline’s routing platform, to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated; and (2) provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated. Covered text providers would be required to comply with this requirement six months from the effective date of final rules. We seek comment on this proposal.

79. Several commenters support developing georouting capabilities for texts to the 988 Lifeline²⁹⁶ and indicate that parity for voice and text service to 988 is an important goal.²⁹⁷ Several

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But see CTIA Reply at 10 (“The record does not identify any feasible technical solutions that currently exist for SMS text messages.”).

²⁹³ *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846, 9874, para. 57 (2014) (*T911 Second Report and Order*). In the 911 context, covered text providers are required to route texts to 911 using coarse location (cell ID and cell sector) or other equivalent means that allows the covered text provider to route a texts to the appropriate PSAP. *Id.*

²⁹⁴ *See* VON Comments at 2 (stating that interconnected VOIP providers and covered text providers offering over-the-top text messages “generally do not have access to real-time routable location information (other than the registered address for purposes of routing 911 calls”).

²⁹⁵ *See infra* Appx. A. Additionally, we also propose to correct the text of section 52.201(b) of Commission’s rules to read “Commercial Mobile Radio Service” instead of “Commercial Mobile Radio Services.” *See id.*

²⁹⁶ *See, e.g.,* Intrado Life & Safety Reply at 7; NACO Comments at 3; NAMI Comments at 4; AFSP Comments at 3; Centerstone Comments at 2; Pyramid Comments at 2; Angela Sullivan at 1 (Express); Samantha Dutton at 1 (Express); Ira J. Smotherman at 1 (Express); Jessica Jolly at 1 (Express); Lowell K. Peterson at 1 (Express); *see also* Vibrant Comments at 7 (“Vibrant supports the efforts of the Commission to improve access to the 988 Lifeline, (continued....)

commenters specifically support a georouting requirement for texts.²⁹⁸ Although some parties argue that a georouting solution for texts is not necessary at this time because most texts are handled at the national rather than local level,²⁹⁹ we note that SAMHSA is currently expanding local response to texts to 988.³⁰⁰ To the extent that texts to 988 are routed to local crisis centers as the result of SAMHSA's evolving service offering, we believe those texts should be routed as accurately as voice calls in order to provide the most responsive care to text users, and seek comment on this belief. Washington Department of Health states that a georouting solution for texts to 988 confers the same types of benefits as georouting for voice calls to 988.³⁰¹ We seek comment on such benefits, and on any additional benefits specific to a georouting solution for texts to 988. Commenters emphasize that text messaging to the 988 Lifeline is a preferred communication method for certain groups, specifically young adults and LGBTQI+ individuals,³⁰² as well as in certain situations in which greater privacy is needed or when cell reception is inadequate to complete a phone call.³⁰³ As a matter of equity, the benefits of georouting communications to 988 should extend to such groups and situations for which there is a preference or need to contact 988 via text messaging. Are there other specific communities or scenarios that would benefit from the implementation of georouting data for texts to 988? For example, does georouting for texts particularly benefit people who are deaf, deafblind, hard of hearing, speech disabled, or have other disabilities that impact communication?³⁰⁴

80. Several telecommunications industry commenters and one national backup provider³⁰⁵ for

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including through this proposed rulemaking"); Vibrant Reply at 9 ("[A]dditional stakeholder discussions are required to address georouting for help seekers communicating via text.").

²⁹⁷ NAMI Comments at 4 (stating that implementing georouting for calls but not texts is "likely [to result in] confusion among people contacting 988 for help, which creates further distrust among potential help-seekers"); AFSP comments at 3 ("Allowing georouting for texts will ensure that people contacting 988 will be connected to local resources no matter how they are contacting the service.").

²⁹⁸ ASFP Comments at 3; Centerstone Comments at 2; Pyramid Comments at 2; Angela Sullivan Comments at 1 (Express); Samantha Dutton Comments at 1 (Express); Ira J. Smotherman Comments at 1 (Express); Jessica Jolly Comments at 1 (Express); Lowell K. Peterson Comments at 1 (Express).

²⁹⁹ Crisis Text Line Comments at 2; CTIA Reply at 3, 11.

³⁰⁰ SAMHSA, *988 Frequently Asked Questions, What happens when I text 988*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Sept. 18, 2024) ("Text service is currently expanding so that an increasing number of texts are routing to local 988 Lifeline network crisis centers based on the texter's area code."); *see also* SAMHSA, *Cooperative Agreement for States and Territories to Improve Local 988 Capacity*, <https://www.samhsa.gov/grants/grant-announcements/fg-23-006> (last visited Sept. 24, 2024) (noting that "[s]tates and territories are expected to use resources to [] enhance recruitment, hiring, and training of the 988 workforce to meet at minimum 90% state or territory calls, chats, and texts demand").

³⁰¹ Washington State DOH Comments at 2-3 (stating that georouting texts to 988 "would offer the same benefits to help seekers using text messages to reach 988 as it would for those calling: it would considerably expedite response times in highly time-sensitive crisis scenarios, allow the 988 counselor to contact the appropriate PSAP with far greater accuracy, offer the time-saving benefit of local knowledge of locations, and would help with development of preventive measures for individual regions").

³⁰² AFSP Comments at 3; Centerstone Comments at 2; NAMI Comments at 4; Pyramid Comments at 2; Angela Sullivan Comments at 1 (Express); Samantha Dutton Comments at 1 (Express); Ira J. Smotherman Comments at 1 (Express); Jessica Jolly Comments at 1 (Express); Lowell K. Peterson Comments at 1 (Express); Alex Kurth Comments at 1 (Express).

³⁰³ Washington State DOH Comments at 3.

³⁰⁴ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16909, 16934, paras. 14 and 56.

³⁰⁵ The Crisis Text Line partners with the Lifeline Administrator and SAMHSA to serve as "a national backup provider for 988 text and chat services in English and Spanish." Crisis Text Line Comments at 1.

988 text and chat services urge the Commission to refrain from adopting regulations for georouting covered text messages to the 988 Lifeline.³⁰⁶ We specifically disagree with commenters who argue that existing routing mechanisms are adequate for purposes of the 988 Lifeline and seek comment on this position.³⁰⁷ Even if “the first six digits of the phone number of people reaching out to the Crisis Text Line are accurate to their state location approximately 86% of the time,”³⁰⁸ as reported by the Crisis Text Line, georouting texts to 988 based on cell location will ensure that an increased portion of users are quickly connected with local life-saving resources. We also believe that the benefits of georouting texts are not limited to instances in which the contact requires an emergency services intervention, as suggested by the Crisis Text Line.³⁰⁹ Instead, we consider that, as with voice, the benefits of georouting for text will extend to all text users connected to a local crisis center because such centers will be more familiar with the local area’s resources, as well as possibly being more familiar with cultural issues or community stressors in the text user’s area.³¹⁰ While there are alternatives to automated georouting that can connect text users with local resources,³¹¹ the Commission remains committed to making it easier for those in crisis to get help.³¹² We seek comment on our analysis and this approach.

81. *The capability to provide georouting data.* We seek comment on our proposed rule that covered text providers must have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format compatible with the Lifeline’s routing platform. In particular, we seek comment on potential georouting solutions for texts to the 988 Lifeline and on any progress to identify and implement a georouting solution for texts to 988 and the steps to complete implementation. We propose this requirement in two parts, with a separate requirement for covered text providers to obtain the capability to provide georouting data, in order to ensure that covered text providers deploy this life-saving technology on their networks by the proposed deadline, regardless of the 988 traffic that a covered text provider has historically originated. Is a separate requirement for covered text providers to obtain the capability to provide georouting data needed, or should the only georouting requirement for covered text providers be the requirement to provide georouting data to the 988 Lifeline?

82. Commenters indicate that some progress has been made, including by CMRS providers, to identify a georouting solution for covered 988 texts, particularly for SMS.³¹³ We are interested in hearing from CMRS providers and other involved parties on the details of such solutions and progress. We also seek information on any parties beyond the CMRS providers, other covered text providers, and the Lifeline Administrator and/or its vendors that would need to participate in a solution for georouting SMS texts that are currently sent to 988. For example, Intrado Life & Safety states that georouting to the 988 Lifeline is “easily achievable . . . by applying the current routing infrastructure for text-to-911 and changing to support the digits ‘988’ in the Text Control Centers that Intrado Life & Safety and Comtech

³⁰⁶ AT&T Reply at 7; CTIA Reply at 2; Crisis Text Line Comments at 4; VON Comments at 2.

³⁰⁷ Crisis Text Line Comments at 2; CTIA Reply at 3, 11.

³⁰⁸ Crisis Text Line Comments at 2.

³⁰⁹ *Id.*

³¹⁰ *988 Georouting Second Further Notice* at *5, para. 14.

³¹¹ Crisis Text Line Comments at 3 (noting that text users can either consensually provide information about their area, or that responders can contact emergency services in the jurisdiction of the phone’s area code to determine the location of the user).

³¹² *See 988 Georouting Second Further Notice* at *1, para. 1.

³¹³ CX360 Comments at 15 (stating that it “is proactively working with industry partners to develop a georouting solution for SMS”); Intrado Life & Safety Comments at 7, n.9 (“[S]everal wireless carriers and their vendors have already identified a solution that can utilize the existing 911 system with little modification to support text to 988.”). *But see* CTIA Reply at 10 (“The record does not identify any feasible technical solutions that currently exist for SMS text messages.”).

maintain for text-to-911.”³¹⁴ We seek comment on the viability of this and any other solutions for providing georouting data to the 988 Lifeline with SMS texts, and the work that still needs to be done to timely deploy a solution on wireless networks. Consistent with our findings in the *Third Report and Order*,³¹⁵ at this time we do not seek comment on georouting solutions for 988 covered texts that would bypass the initial direct and centralized routing system of the 988 Lifeline.³¹⁶ In what ways are any proposed solutions for providing georouting data with covered 988 texts similar to or different from the solutions proposed for providing georouting data with wireless calls to 988? Can the work done by CMRS providers either to implement georouting for 988 voice calls or to deploy text-to-911 be leveraged for text-to-988? Are such solutions cost-effective and technologically feasible for both nationwide and non-nationwide CMRS providers and any other impacted covered text providers? What is the time frame for a pilot or testing any solutions, and what would be the anticipated time frame for moving from testing to operational deployment? We also seek data, documents, and other information that provide details about the current status of any proposed georouting solutions for covered 988 texts.

83. In addition, we seek comment on what technical challenges may arise in providing georouting data with covered 988 text messages, and specifically what challenges would arise for CMRS providers and any other impacted covered text providers that originate SMS text messages to provide georouting data with SMS text messages to 988. Commenters disagree on the difficulty of implementing a georouting solution for texts to 988.³¹⁷ Some commenters allude to technical challenges but fail to provide specific details as to the nature and scope of such challenges.³¹⁸ We seek additional insights or comments on any such challenges.

84. We disagree with arguments that the Commission should not adopt georouting requirements for SMS text messages to 988 based on the same reasoning underlying our decision to defer consideration of 911 location-based routing requirements for SMS, namely, the absence of supporting standards and that not all local centers can receive texts.³¹⁹ While we did consider such factors in the *Location-Based Routing Order*,³²⁰ the record in that proceeding also indicated that implementing location-based routing for texts to 911 would require extensive retrofitting of legacy SMS networks.³²¹ No similar record exists in this proceeding, and indeed, Intrado Life & Safety argues that implementing georouting for text-to-988 could be as simple as changes “to support the digits ‘988’ in the Text Control Centers that Intrado Life & Safety and Comtech maintain for text-to-911” with no other provider-required changes for

³¹⁴ Intrado Life & Safety Reply at 7.

³¹⁵ *Supra* paras. 31-33.

³¹⁶ See, e.g., Intrado Life & Safety Comments at 8 (discussing a 988 georouting solution that would directly route 988 to state ESInets).

³¹⁷ See INCOMPAS Comments at 4 (arguing that text-to-988 georouting “will require providers to inventory their system capabilities and, depending on their network infrastructure, may require modifications to short message service centers as well as wireless carrier’s location acquisition, session management, and functional responsibilities”). But see Intrado Life & Safety Reply at 7 (“Implementing text-to-988 [georouting] is easily achievable.”).

³¹⁸ AT&T Reply at 6 (“[I]t is premature to require georouting of 988 text messages because of the greater complexities associated with that effort.”); Crisis Text Line Comments at 2 (“[T]here are significant challenges to implementing georouting solutions for texts to 988”); Reimagine Crisis Response Comments at 2 (“[A] georouting solution for text messages to 988 . . . will take different technological solutions.”).

³¹⁹ CTIA Reply at 13.

³²⁰ *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4, 2024 WL 356874 at *20, para. 56 (Jan. 26, 2024) (*LBR Report and Order*).

³²¹ *Id.* at *22, para. 61.

implementation.³²² Even if there are no existing standards for the interface to transmit location information between the Short Message Service Center (SMSC)³²³ and the Text Control Center (TCC) for texts to 988, the TCC is likely able to retrieve the location of the text to 988 from the CMRS provider's Gateway Mobile Location Center (GMLC)³²⁴ using existing practices for texts to 911.³²⁵ We seek comment on this analysis. Further, 911 location-based routing and georouting for 988 use different granularity of data and different entities perform the routing function.³²⁶ 911 location-based routing uses precise data on the location of the device to route 911 calls to the appropriate destination,³²⁷ whereas georouting for 988 can be accomplished with less granular information, such as the FIPS code or wire center.³²⁸ For 911 calls and texts, covered text providers determine the destination for routing based on available location information; for 988 calls and texts, it remains the purview of the 988 Lifeline and its administrator to route 988 calls and texts based on location data provided by the provider. CTIA's argument that we should not extend georouting requirements to covered 988 text messages based on our actions in the 911 location-based routing proceeding are unpersuasive due to these technical differences between these routing methodologies and differences in the record thus far received. We seek comment on this analysis.

85. *Providing georouting data.* We seek comment on our proposed requirement for covered text providers to provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated. As with voice calls, SAMHSA, the agency with oversight of the 988 Lifeline Administrator, must ultimately determine the routing data that it will deem acceptable and that it will require the 988 Lifeline to configure its systems to read. What georouting data should covered text

³²² Intrado Life & Safety Reply at 7. A Text Control Center (TCC) is a controlling functional element specified in a relevant standard for text-to-911. ATIS and Telecommunications Industry Association (TIA), Joint ATIS/TIA Native SMS/MMS Text to 9-1-1 Requirements and Architecture Specification – Release 2 at section 7.2.1 (May 2015), <https://webstore.ansi.org/standards/atis/std110> (ATIS/TIA J-STD-110.v002). The TCC has the responsibility to “(1) convert various protocols and act as a gateway; (2) request location that may be used for routing; (3) request routing instructions; and (4) initiate a dialogue with the PSAP through the appropriate interworking function of the TCC. When the TCC receives an initial text message, it obtains location from the [location server]. It then uses that location to obtain routing instructions from the [routing server]. Then, the TCC converts the text message to an appropriate protocol and initiates a dialogue with the [Public Safety Answering Point] (via the emergency services network) through the appropriate interworking function of the TCC.” *Id.*

³²³ A Short Message Service Center (SMSC) is a network element of a Commercial Mobile Service Provider network which distributes SMS messages. ATIS/TIA J-STD-110.v002 at section 7.2.4.

³²⁴ A Gateway Mobile Location Center (GMLC) is the point of interface between the GSM wireless network and the Emergency Services Network. The GMLC retrieves, forwards, stores and controls position data associated with wireless callers. NENA, NENA Knowledge Base, [https://kb.nena.org/wiki/GMLC/MLC_\(Gateway_Mobile_Location_Center\)](https://kb.nena.org/wiki/GMLC/MLC_(Gateway_Mobile_Location_Center)) (Sept. 13, 2021).

³²⁵ See John Snapp, Senior Technical Officer, Intrado, and Judy Flores, 9-1-1 Administrator, Black Hawk Consolidated Communications Center, Presentation on Text-to-911 to the Emergency Access Advisory Committee at 5, <https://transition.fcc.gov/cgb/dro/EAAC/Snapp-Text-to-911-presentation.pdf> (April 8, 2011) (showing that SMS aggregators for 911 can receive a location response from a carrier's location server); see also Comtech, *Text-to-911 for Carriers*, <https://www.comtech911.com/solutions/sst/text-9-1-1-carriers> (last visited Sept. 9, 2024) (describing that Comtech can enable either Location by Reference (i.e., allowing a text messaging service provider to utilize a centralized location server to provider callers locations) or Location by Value (i.e., enabling a text messaging service provider to include a location in the Text to 9-1-1 request)).

³²⁶ CTIA Oct. 9, 2024 *Ex Parte* at 2.

³²⁷ 47 CFR § 9.3 (“Location-based routing”).

³²⁸ *Supra* para. 39.

providers be required to provide with covered 988 texts? Would georouting data for covered 988 texts differ from the data required for georouting voice calls to 988? In our proposed rule, we require that covered text providers provide georouting data with covered 988 texts “when available.” Is such a limitation necessary? Would it be preferable to require covered text providers to provide georouting data with texts to 988 “when technically feasible”? Given that the Commission currently only requires covered text providers to send SMS text messages to the 988 Lifeline, are there any situations in which georouting data for SMS texts would not be available, and if so, what are such situations? Are there situations in which CMRS providers in particular do not have access to geolocation data for SMS text messages to the 988 Lifeline, and how frequently do such situations occur? Are there certain types of covered text providers that originate SMS texts for which it is technologically infeasible to obtain georouting data, and if so, what are those types of providers? We invite commenters to provide additional data in the record on the number and/or percentage of covered 988 texts originated by CMRS providers and other covered text providers. Do covered text providers besides CMRS providers have access to geolocation data, defined in this proceeding as “cell-based”? Do they have access to other kinds of location data? If so, how is that location data generated and with what level of resolution?

86. What steps do the Lifeline Administrator and/or its vendors need to take to be ready to receive georouting data for texts? What specific functions would the Lifeline Administrator and/or its service providers need to perform to successfully route texts to geographically appropriate crisis centers, once received by the 988 Lifeline’s centralized routing platform? How many crisis centers can currently accept texts to 988, and are there plans to expand availability of local text resources? How would the 988 Lifeline determine the availability of a local crisis center to accept texts? Would texts to 988 route to a backup crisis center if no local crisis center was available? As the availability of text capabilities at local crisis centers grows, will routing requirements change, and how would the Lifeline Administrator update its routing?

87. Currently, individuals can text “pride” to 988 to be directly connected to an LGBTQI+ trained counselor or “ayuda” to connect with a Spanish-speaking counselor, and veterans and service members who text 988 will be redirected to text 838255 to reach the Veterans Crisis Line.³²⁹ We seek comment on whether any georouting solutions for texts to 988 that are under development contemplate routing for such texts, and whether georouting solutions are needed when a text-to-988 user selects a specialized service.

88. *Implementation time frame.* We propose that covered text providers comply with the proposed text-to-988 georouting requirements by a uniform implementation deadline of six months from the effective date of final rules. We seek comment on this approach. A six-month time frame is consistent with the Commission’s requirement in the 911 context that covered text providers route texts to 911 to the appropriate PSAP within six months.³³⁰ We believe that enabling georouting for texts to 988 should occur swiftly in order to provide improved service to text-to-988 users, and that rapid implementation will minimize confusion for both providers and individuals texting 988. Is six months an adequate amount of time for covered text providers to comply with the proposed requirements? If not, why? Should we adopt different compliance time frames for different kinds of covered text providers, such as nationwide or non-nationwide CMRS providers, or other interconnected text providers, as INCOMPAS suggests?³³¹ We note that the Commission has previously provided uniform timelines for texting requirements across covered text providers and has declined to provide different timelines for

³²⁹ SAMHSA, *988 Frequently Asked Questions, What happens when I text 988*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Sept. 18, 2024).

³³⁰ *T911 Second Report and Order*, 29 FCC Rcd at 9871, para. 50.

³³¹ INCOMPAS Comments at 4 (stating that the Commission should adopt a four-year implementation timeline for non-nationwide CMRS providers, including covered text providers).

different kinds of covered text providers.³³² Is the situation different with georouting such that we should consider a different timeframe?

89. We ask that commenters identify any work to comply with the proposed requirements and the estimated time to complete that work. Further, we ask that commenters identify any technical, financial, operational, legal, or other factors that may influence the time frame for delivering georouting data with all covered 988 text messages. At this time, the Commission only requires covered text providers to transmit SMS text messages to 988.³³³ If the Commission determines that covered text providers must support formats besides SMS, when should covered text providers be required to come into compliance with georouting requirements for new covered 988 text message formats? When do the Lifeline Administrator and/or its vendors anticipate that it could receive and begin using georouting data? Should we make compliance with the proposed requirements conditional on the ability of the Lifeline Administrator and/or its vendors to receive and use georouting data? Should we make the georouting requirements for covered 988 text messages effective six months after the Lifeline Administrator indicates that it can receive and use georouting data with text messages? Alternatively, should we make compliance conditional on the development of resources at the local level to respond to texts to 988?

E. Legal Authority

90. We tentatively conclude that the Commission has authority under Title III of the Act and the 21st Century Communications and Video Accessibility Act of 2010 (CVAA) to adopt rules requiring covered text providers to deliver georouting data with covered 988 text messages, and we seek comment on this tentative conclusion. As discussed in the *Text-to-988 Second Report and Order*, Title III of the Act provides us a broad mandate to manage spectrum usage in the public interest.³³⁴ We believe Title III of the Act provides us sufficient authority to require CMRS providers to implement georouting for text-to-988 given the scope of the benefits we estimate will accrue as the result of these proposed rules.³³⁵ The CVAA grants us authority to adopt “other regulations . . . as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network.”³³⁶ The Commission has previously concluded that the 988 Lifeline constitutes an emergency network and that text-to-988 service provides access to emergency services for people with disabilities, including those with hearing and speech disabilities.³³⁷ As a result, we believe the CVAA provides us authority to require interconnected text providers to implement georouting for text-to-988 service because such steps improve access for people with disabilities to the 988 network. We seek comment on our analysis and tentative conclusion.

F. Benefits and Costs of 988 Georouting for Texts to 988

91. In the *Third Report and Order*, we estimated benefits of \$120 million from georouting wireless calls to the 988 Lifeline.³³⁸ We expect that layering on the capability to georoute texts to 988 and the data requirements entailed will add some incremental costs. We estimate five-year, text-to-988 georouting benefits of nearly \$17 million. Wireless carriers have offered no specific, credible estimates of implementation costs. We seek comment on this analysis and encourage commenters to submit more granular data on costs and benefits.

³³² See, e.g., *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16925, para. 40; *T911 Second Report and Order*, 29 FCC Rcd at 9871, para. 50.

³³³ 2024 WCB *Text-to-988 Format Notice* at *1.

³³⁴ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16933, para. 54.

³³⁵ See *infra* Section IV.F.

³³⁶ 47 U.S.C. § 615c(g).

³³⁷ *Text-to-988 Second Report and Order*, 36 FCC Rcd at 16933, para. 55.

³³⁸ *Supra* Section III.K.

1. Benefits

92. *Reduced Suicide Mortality.* Suicide elicits shock, anguish, grief, and guilt among survivors. Imitators often follow suit, creating clusters that compound communities' suffering. While we lack the tools to quantify and monetize this burden on communities, we can acknowledge its vastness. Similarly, we cannot measure the full benefit of suicide prevention. We can, however, estimate what communities might be willing to pay to prevent suicide, more formally the value of reduced mortality risk (VRMR). We tentatively conclude that the VRMR for the ability to send texts to 988 is large and seek comment on this tentative conclusion and analysis.

93. In estimating the benefits for implementing georouting for covered texts to 988, we focus on the benefits that specifically would accrue to youth and young adults that have been exposed to text-to-988 misroutes. We seek comment on this approach. The record in this proceeding indicates that young Americans, who are disproportionately at risk for mental health crises, prefer communicating by text rather than calls.³³⁹ Studies tell us that children, on average, get their first cellphones by 11.6 years of age. By the age of 13, 95% percent of teenagers have access to a smartphone, and 97% of teens 15-17 years old own a smartphone.³⁴⁰ The American Foundation for Suicide Prevention cites a 2022 study's finding that "over three-quarters of the texts to the Crisis Text Line in one twelve-month period were initiated by individuals under the age of 25."³⁴¹ More precisely, 76% of 988 texts are generated by youth and young adults 24 and younger.³⁴² Because 988 texts are routed using cellphone numbers,³⁴³ like voice calls to 988, some fraction of texts to 988 are bound to be misrouted. Heavy reliance on texting renders youth the demographic group most vulnerable to 988 text misrouting. The fraction of youth and young adults at risk is large. The Crisis Text Line's comments tell us that "[c]urrently, texts to 988 are routed utilizing cell phone area codes" and "the first six digits of the phone number of people reaching out to Crisis Text Line are accurate to their state location approximately 86% of the time."³⁴⁴ From that statistic, we infer that the remaining 14% of texts routed by the first six digits of the originating device are inaccurate to their state location, or geographically mismatched. In 2022, there were nearly 72.5 million youth and young adults 17 and under, of whom 791 committed suicide after that year's July 16 launch of 988.³⁴⁵ We do not know what fraction of youth outreach to 988 would be by text; conservatively, we assume one half. This implies about 55.4 ($= 791 * 14\% / 2$) young persons would have been exposed to text-to-988

³³⁹ *Text-to-988 Second Report and Order*, 36 FCC Red at 16906-07, para. 11.

³⁴⁰ Alexis Bazen, *Cellphone Statistics by Age*, Consumer Affairs: Journal of Consumer Research, December 12, 2023, https://www.consumeraffairs.com/cell_phones/cell-phone-statistics.html. See also Allen Richter, Victoria Adkins, and Ellen Selkie, Youth Perspectives on the Recommended Age of Mobile Phone Adoption: Survey Study, *JMIR Pediatric Parent*, 2022 Oct-Dec; 5(4): e40704, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9664330/#:~:text=Mobile%20phone%20adoption%20in%20the,a%20cell%20phone%20%5B2%5D>.

³⁴¹ AFSP Comments at 3.

³⁴² Anthony R. Pisani et al., *Individuals who text crisis text line: Key characteristics and opportunities for suicide prevention*, *Suicide and Life-Threatening Behavior*, 52:567-582 (2022), DOI: 10.1111/sltb.12872, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/sltb.12872>.

³⁴³ Crisis Text Line Comments at 2.

³⁴⁴ *Id.*

³⁴⁵ Centers for Disease Control and Prevention Web-based Injury Statistics Query Report (CDC WISQARS) database query, <https://wisqars.cdc.gov/reports/?o=MORT&y1=2001&y2=2022&t=0&i=2&m=20810&g=00&me=0&s=0&r=0&ry=0&e=0&yp=65&a=custom&g1=0&g2=199&a1=0&a2=17&r1=INTENT&r2=YEAR&r3=NONE&r4=NONE>. Whether we allocate by number of months (*i.e.*, $6/12=0.5$) or by total suicides for July-December (*i.e.*, $24,742/49,746=0.500008085$), half of any age cohort's suicides can be attributed to July-December 2022. For monthly suicide data, see CDC, *Fatal Injury Trends*, <https://www.cdc.gov/injury/wisqars/fatal/trends.html>.

misroutes. We seek comment on this analysis and encourage commenters to submit additional data on the benefits to implementing georouting for texts to 988.

94. Georouting texts could have reduced suicide mortality. The Crisis Text Line points out that “approximately less than 3% of all 988 contacts resulting (sic) in an emergency services intervention requiring local support,”³⁴⁶ meaning emergency intervention could have benefited at minimum about 1.66 ($= 3\% * 791 * 14\% / 2$) youth suicide victims annually whose dispatch might be subject to delays due to misrouting. The comment record suggests that misrouting causes customized, local crisis-intervention services to arrive late or not at all, delaying effective interventions.³⁴⁷ We examine the consequences for suicide mortality of a minimal, one-minute delay in the effectiveness of texts to 988. Commission staff have previously estimated that a one-minute reduction in emergency response time can reduce mortality by 17%.³⁴⁸ A 17% reduction in the total number of deaths attributable to suicide among youth 17 and under with possible geographic mismatch would amount to about 0.28 ($= 17\% * 3\% * 791 * 14\% / 2$) fewer annual death due to suicide, a mortality-reduction risk for which Americans would collectively be willing to pay \$3.5 ($= 0.28 * \$12.5$) million annually. The present value of a five-year stream of such payments is \$16.5 million.³⁴⁹ We seek comment on this analysis and additional data we should consider.

95. *Other Benefits and Possible Benefits Underestimation.* We suspect that our tally underestimates the benefits of georouting texts to 988 for several other reasons and seek comment on our analysis herein. First, along with suicide reduction, it is expected that text-to-988 georouting will reduce suicide attempts and their accompanying medical, lost-work, and lost-quality-of-life costs. We have not estimated these benefits but seek comment on their validity and impact. Second, our reliance on the Crisis Text Line’s assertion that the first six digits of the phone number are accurate to the user’s state location approximately 86% of the time is likely an overestimation of the accuracy rate of texts reaching the appropriate 988 crisis center. We consider, in particular, that in large, populous states such as California, Florida, New York, and Texas—the four states that are collectively home to more than one-third of U.S. population³⁵⁰—there are vast economic, cultural, and language differences within their borders that could hinder effective suicide intervention if the text is not routed to the 988 crisis center serving the location of the text user. Even though we rely on the Crisis Text Line’s estimation, our

³⁴⁶ Crisis Text Line Comments at 2.

³⁴⁷ Local centers “frequently have dispatch and referral arrangements with mobile crisis teams and MOUs with nearby 911 PSAPs, emergency departments and law enforcement.” John Draper Comments at 2. For example, Los Angeles County residents connected to an out-of-area call center will likely not be connected to a specially trained Field Intervention Team that can be deployed to the caller’s location or receive other needed resources. See LA County DOMH Comments at 1-2. LegalMind Society provides the example of two of its board members whose mismatched area codes render them “unable to receive the proper local information and resources that could mean the difference between life and death.” LegalMind Society Comments at 3. The Michigan State 911 Committee states, “[t]he current system of routing 988 calls . . . creates confusion and delays in providing necessary life-saving help to those who call 988 but are actually in need of emergency services.” Michigan State 911 Committee Comments at 1. See also John Draper Comments at 3; Centerstone Comments at 2; Comtech Comments at 3; MHA Comments at 1; NACO Comments at 1; Teri Meider Comments at 1; Vibrant MHLG Comments at 1.

³⁴⁸ *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4, at 52, para. 118 (citing *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, 37 FCC Rcd 15183, 15206-07, para. 61 & n.161 (2022) (*911 Notice of Proposed Rulemaking*)).

³⁴⁹ We use a Value of Reduced Mortality Risk (VRMR) of \$12.5 million. See *911 Notice of Proposed Rulemaking*, 37 FCC Rcd at 15207-08, para. 62 & n.162 (citing U.S. Department of Transportation, Departmental Guidance on Valuation of a Statistical Life in Economic Analysis (Mar. 4, 2022) (last updated May 1, 2023), <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>). The present value of five equal annual payments using OMB Circular A-4’s discount rate of 2% is ~\$16,500,000.

³⁵⁰ U.S. and World Population Clock, U.S. Census Bureau, <https://www.census.gov/popclock/>.

analysis likely overstates the percentage of texts that are currently routed to the appropriate 988 crisis center. As a result, the benefits of our proposed intervention are likely underestimated. We seek comment on this assumption and our rationale.

96. Another reason our tally may underestimate the benefits of georouting texts to 988 is that youths 17 and under are the age cohort losing the greatest number of productive years of life to suicide. In 2022 alone, the 1,582 suicides among youth 17 and under cost the U.S. 78,866 potential years of life before age 65, the typical retirement age. Our age-agnostic valuation of reduced mortality may not fully capture this loss. In addition, 24% of texts to 988 are generated by adults; therefore, by excluding adults we overlook the prevention a sizable fraction of the 47,891 suicides among those 18 and older, for whom we proffer no estimated benefits of mortality reduction. Further, we do include morbidity and property costs associated with unsuccessful suicide attempts. Finally, we have not reckoned at all with the vast, unquantifiable benefits of sparing victims' families, friends, and communities the emotional devastation of losing children to suicide. We seek comment on the magnitude of any benefits that we may have overlooked or underestimated. More generally, we seek comment on our benefits estimates and the methodology underlying them. In particular, we seek comment on the assumptions used to identify and estimate the number of text-to-988 misroutes among youth 17 and under. We seek comment on the number of 988 misroutes occurring among adults 18 and older. We also seek comment on the extent of text-to-988 misroutes that may be occurring among LGBTQI+ individuals, racial and ethnic minorities, veterans, and other communities at disproportionately greater risk of suicide.

2. Costs

97. AT&T, the Crisis Text Line, and CTIA warn of significant text-to-988 implementation challenges, both on the processing and receiving ends of 988 texts, and urge the Commission to either delay or altogether refrain from requiring text-to-988 capability.³⁵¹ INCOMPAS advocates a four-year text-to-988 implementation timeline for non-nationwide wireless providers.³⁵² According to Intrado Life & Safety, on the other hand, “developing a text-to-988 solution for both the current 988 Lifeline network and state ESInets tells us the problem is easily addressable from a technical standpoint. Implementing text-to-988 is easily achievable through either the current 988 Lifeline or to a state’s ESInet by applying the current routing infrastructure for text-to-911 and changing to support the digits ‘988’ in the Text Control Centers that Intrado Life & Safety and Comtech maintain for text-to-911.”³⁵³ Intrado Life & Safety continues, “[p]roviders should not require any other changes for implementation. The only credible barrier to text-to-988 is that the 988 Lifeline network is likely not currently capable of georouting text-to-988 calls, but this potential barrier disappears if providers leverage the states’ existing NG911 infrastructure.”³⁵⁴ Given competing claims regarding implementation costs, we seek comment on credible, specific estimates of implementation costs and how such costs may vary by type or size of provider, network technology, or along any other relevant dimension. What are the key costs of setting up geolocation for covered 988 texts? What are the costs for covered text providers to have the capability to provide georouting data with covered 988 text messages? What are the costs for covered text providers to provide georouting data with covered 988 text messages, when available, to the 988 Lifeline? What aspects of implementation of georouting for 988 voice calls will transfer to geolocation for covered 988 texts at minimal additional cost? We seek comment on the cost to providers of directly implementing our proposed requirements, or alternatively of purchasing the required services from a third-party. What costs are associated with Text Control Centers, if such a solution is chosen by covered text providers? We also seek detailed descriptions of the technical barriers to implementing georouting for text-to-988 and specific, itemized estimates of the costs of overcoming those barriers, if possible. We seek detailed

³⁵¹ AT&T Reply Comments at 6-7; Crisis Text Line Comments at 2-4; CTIA Reply at 2-3, 10-11.

³⁵² INCOMPAS Comments at 4.

³⁵³ Intrado Life & Safety Comments at 7.

³⁵⁴ *Id.*

descriptions of the nature and costs of any proposed technically feasible solutions to implement text-to-988 and their accompanying timelines.

G. Other Efforts to Promote Digital Equity and Inclusion

98. *Digital Equity.* The Commission, as part of its continuing effort to advance digital equity for all,³⁵⁵ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comments on any equity-related considerations³⁵⁶ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

V. PROCEDURAL MATTERS

99. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),³⁵⁷ 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.”³⁵⁸ Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in this *Third Report and Order* on small entities. The FRFA is set forth in Appendix C.

100. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Third Further Notice of Proposed Rulemaking*. 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 *Third Further Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

101. *Paperwork Reduction Act Analysis.* The *Third Report and Order* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). The *Third Further Notice of Proposed Rulemaking* may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by

³⁵⁵ 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.

³⁵⁶ We define the term “equity” consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

³⁵⁷ *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).

³⁵⁸ 5 U.S.C. § 605(b).

the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

102. *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 *Third Report and Order and Third Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

103. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of the *Third Further Notice of Proposed Rulemaking* will be available on <https://www.fcc.gov/proposed-rulemakings>.

104. *Ex Parte Rules.* This proceeding in this *Third Further Notice of Proposed Rulemaking* shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁵⁹ 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).³⁶⁰ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

105. *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.

³⁵⁹ 47 CFR § 1.1200(a).

³⁶⁰ *Id.* § 1.1206(b).

- 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.

106. *Confidentiality.* Some information and materials requested by this *Third Further Notice of Proposed Rulemaking* may be confidential and proprietary. Individuals and entities may request that confidential and proprietary information submitted to the Commission be withheld from public inspection consistent with section 0.459 of the Commission's rules.³⁶¹

107. *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).

108. *Additional Information.* For additional information on this proceeding, contact Merry Wulff, Wireline Competition Bureau, Competition Policy Division, at Merry.Wulff@fcc.gov or (202) 418-1084.

VI. ORDERING CLAUSES

109. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 1, 2, 4, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 154, 201, 218, 251(e), 301, 303, 307, 309(a), 316, and 332, this *Report and Order* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register.

110. **IT IS FURTHER ORDERED** that pursuant to the authority found in Sections 1, 2, 4, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 154, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c, this *Third Further Notice of Proposed Rulemaking* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register.

111. **IT IS FURTHER ORDERED** that Part 52 of the Commission's rules **IS AMENDED** as set forth in Appendix A, and such rule amendment will become effective 30 days after publication in the Federal Register.

112. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, **SHALL SEND** a copy of this *Third Report and Order* and *Third Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

113. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance and Program Management, **SHALL SEND** a copy of this *Third Report and Order* and *Third Further Notice of Proposed Rulemaking* 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

³⁶¹ 47 CFR § 0.459.

APPENDIX A
FINAL RULES

The Federal Communications Commission amends part 52 of Title 47 of the Code of Federal Regulations as follows:

PART 52 □ NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201-205, 207-209, 218, 225-227, 251-252, 271, 303, 332, unless otherwise noted.

2. Amend § 52.200 by revising paragraph (b) to read as follows:

§ 52.200 Designation of 988 for a National Suicide Prevention and Mental Health Crisis Hotline.

* * * * *

(b) All covered providers shall transmit all calls initiated by an end user dialing 988 to the national suicide prevention and mental health crisis hotline system maintained by the Assistant Secretary for Mental Health and Substance Use and the Secretary of Veterans Affairs.

* * * * *

3. Amend § 52.201 by revising paragraph (a) to read as follows:

§ 52.201 Texting to the National Suicide Prevention and Mental Health Crisis Hotline.

(a) **Support for 988 text message service.** Beginning July 16, 2022, all covered text providers must route a covered 988 text message to the national suicide prevention and mental health crisis hotline system maintained by the Assistant Secretary for Mental Health and the Secretary of Veterans Affairs.

* * * * *

4. Add § 52.202 to read as follows:

§ 52.202 Georouting of Wireless Calls to the National Suicide Prevention and Mental Health Crisis Hotline.

(a) **Georouting.** All CMRS providers must:

- (1) Have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format that is compatible with the Lifeline's routing platform, to allow routing of the 988 call by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the 988 call is initiated.
- (2) Provide georouting data, when available, with 988 calls to the Lifeline Administrator sufficient to allow routing of the 988 call by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the 988 call is initiated.

(b) **Scope of section.** The requirements of this section are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

(1)

- (i) Offer real-time, two way switched voice service that is interconnected with the public switched network; and
- (ii) Use an in-network switching facility that enables the provider to reuse frequencies

and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

(2) The requirements of this section do not apply to 988 calls transmitted using roaming capabilities.

(c) **Compliance.**

- (1) By 30 days after [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]: Nationwide CMRS providers shall provide georouting data with wireless 988 calls.
- (2) By 24 months after [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]: All CMRS providers shall provide georouting data with wireless 988 calls.

(d) **Definitions.** For purposes of this section:

Commercial mobile radio service (CMRS) means a mobile service that is:

- (1)
 - (i) Provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;
 - (ii) An interconnected service; and
 - (iii) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (2) The functional equivalent of such a mobile service described in paragraph (1) of this definition.
- (3) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.
- (4) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

Georouting data. Location data generated from cell-based location technology that is aggregated to a level that will not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset.

Lifeline Administrator. The Lifeline Administrator controls the 988 call routing platform pursuant to contract with the Substance Abuse Mental Health Services Administration.

Nationwide CMRS provider. A CMRS provider whose service extends to a majority of the population and land area of the United States.

Non-nationwide CMRS provider. Any CMRS provider other than a nationwide CMRS provider.

APPENDIX B
PROPOSED RULES

The Federal Communications Commission amends part 52 of Title 47 of the Code of Federal Regulations as follows:

PART 52 □ NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201-205, 207-209, 218, 225-227, 251-252, 271, 303, 332, unless otherwise noted.

2. Amend § 52.201 by:

- a. Revising paragraph (b);
- b. Adding to paragraph (c) in alphabetical order definitions for “Commercial mobile radio service (CMRS),” “Georouting data,” and “Lifeline Administrator;” and
- c. Adding paragraph (d).

The revisions and additions read as follows:

§ 52.201 Texting to the National Suicide Prevention and Mental Health Crisis Hotline.

* * * * *

(b) *Access to SMS networks for 988 text messages.* To the extent that Commercial Mobile Radio Service (CMRS) providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 988 text messages originating on such other covered text providers’ application services.

(c) * * *

* * * * *

Commercial mobile radio service (CMRS) means a mobile service that is:

- (1)
 - (i) Provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;
 - (ii) An interconnected service; and
 - (iii) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (2) The functional equivalent of such a mobile service described in paragraph (1) of this definition.
- (3) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.
- (4) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

* * * * *

Georouting data means location data generated from cell-based location technology that is aggregated to a level that will not identify the location of the cell site or base station receiving the 988 call or text or otherwise identify the precise location of the handset.

Lifeline Administrator is the entity that controls the 988 call routing platform pursuant to contract with the Substance Abuse Mental Health Services Administration.

* * * * *

(d) *Georouting*. By [INSERT DATE SIX MONTHS AFTER DATE OF FEDERAL REGISTER PUBLICATION], all covered text providers must:

(1) Have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator in a format that is compatible with the Lifeline's routing platform, to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated.

(2) Provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator sufficient to allow routing of the covered 988 text message by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the covered 988 text is initiated.

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 *Implementation of the National Suicide Hotline Act of 2018, Second Further Notice of Proposed Rulemaking (988 Georouting Further Notice)* adopted in April 2024.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *988 Georouting Further Notice*, including comments on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the *Third Report and Order*, the Commission adopts rules to facilitate access to life-saving services for people in suicidal, mental health, and substance use crises by improving the routing of wireless calls to the 988 Suicide & Crisis Lifeline (988 Lifeline or Lifeline). The 988 Lifeline was originally designed to route calls to crisis centers based on the area code and exchange associated with a caller's device.⁴ However, as technology trends have shifted from landline phones to mobile phones,⁵ many callers now seek help from the 988 Lifeline using wireless devices with area codes that may not correspond to their physical locations.⁶ Although the 988 Lifeline provides meaningful support for help-seekers regardless of their location,⁷ discrepancies between callers' physical locations and the area codes associated with their wireless devices can complicate access to local resources, which mental health advocates emphasize are critical to achieving the full life-saving potential of the 988 Lifeline.⁸

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Second Further Notice of Proposed Rulemaking, FCC 24-45, 2024 WL 1905193, at *16, Appx. A (rel. Apr. 26, 2024).

³ 5 U.S.C. § 604.

⁴ See Substance Abuse and Mental Health Services Administration (SAMHSA), *988 Frequently Asked Questions, FAQs About Privacy, Call Routing, and Network Functioning*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Sept. 2, 2024).

⁵ CTIA estimates that the total number of wireless subscriber connections increased from approximately 207 million in 2005 to 558 million in 2023. See CTIA, *Summary of CTIA's Annual Wireless Industry Survey 2022*, <https://api.ctia.org/wp-content/uploads/2022/09/Summary-of-CTIA's-Wireless-Industry-Survey-2022.pdf> (last visited Aug. 22, 2024) (noting the estimated number of wireless connections for 2005); CTIA, *2024 Annual Survey*, at 4, <https://api.ctia.org/wp-content/uploads/2024/08/2024-Annual-Survey-1.pdf> (last visited Sept. 24, 2024). See also Pew Research Center, *Mobile Fact Sheet* (Jan. 31, 2024), <https://www.pewresearch.org/internet/fact-sheet/mobile/> (noting “[t]he vast majority of Americans – 97% – now own a cellphone of some kind”).

⁶ See Letter from Miriam E. Delphin-Rittmon, Ph.D., Assistant Secretary for Mental Health and Substance Use, SAMHSA, to NAMI et al., WC Docket No. 18-336, at 1 (filed Aug. 5, 2024) (SAMHSA Aug. 5, 2024 Letter) (noting that “[w]hile callers today receive a localized response based on their phone's area code, many people rely on wireless phones with area codes that do not match their physical locations”).

⁷ See, e.g., Burrell Behavioral Health Comments at 1 (stating that studies have shown that “nearly eighty percent of callers interviewed nine days on average after the call reported that the 988 Lifeline prevented them from taking their own lives”); Ashley Lemke Comments at 1 (same); HeartLine Comments at 1 (same); NWHS Comments at 1 (same); VOAWW Comments at 2 (same).

⁸ See, e.g., AFSP Comments at 1 (“Ensuring that every contact is receiving the most localized, appropriate, and immediate supports is critical in addressing and resolving mental health, suicide, and substance use crises in real time.”); Burrell Behavioral Health Comments at 2 (“Localized crisis support could be the difference between life and death for hundreds of thousands of individuals annually.”); see also Ashley Lemke Comments at 2; HeartLine (continued....)

3. The rules adopted in the *Third Report and Order* aim to facilitate access to critical local resources for the vast majority of wireless 988 callers by requiring wireless providers to implement georouting solutions for 988 calls. Specifically, the *Third Report and Order* requires that all Commercial Mobile Radio Service (CMRS) providers⁹ have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format that is compatible with the Lifeline's routing platform.¹⁰ The *Third Report and Order* also requires that all CMRS providers must provide georouting data, when available, with 988 calls to the Lifeline Administrator. These requirements will enable the 988 Lifeline to route wireless calls to appropriate crisis centers based on the geographic area associated with the origin of a 988 call, rather than by area code and exchange. With "georouting data" as defined under the Commission's rule, CMRS providers must aggregate location data generated from cell-based technology to a level that does not identify the location of the cell site and base station receiving the 988 call or otherwise specify the caller's precise location. The *Third Report and Order* adopts a 30 day timeline for nationwide CMRS providers to implement georouting for wireless 988 calls and provides 24 months for implementation by non-nationwide CMRS providers. Finally, the *Third Report and Order* revises the Commission's existing 988 voice and texting rules to permit routing to the national suicide prevention and mental health crisis hotline system without need for translation to the toll free access number. This revision will provide greater flexibility and help futureproof the use of 988 by enabling wireless providers to implement georouting solutions that may require broader routing parameters.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the *988 Georouting Further Notice* IRFA. However, several commenters discussed the potential impact of rules on non-nationwide CMRS providers.

5. The Competitive Carriers Association (CCA), Southern Communications Services, Inc. (Southern Linc), and the Rural Wireless Association (RWA) advocated for the Commission to give providers flexibility to account for their individual networks, the limitations of current georouting solutions, or the challenges faced by non-nationwide providers.¹¹ In addition, RWA advocated for the Commission to allow small rural non-nationwide CMRS providers to implement georouting solutions on a voluntary basis.¹² Alternatively, RWA called for the Commission to allow small rural non-nationwide CMRS providers additional time, funds to subsidize efforts, and flexibility in developing georouting

(Continued from previous page) _____

Comments at 1; NWHS Comments at 2; Tabatha Stafford Comments at 2; VOAWW Comments at 2 (all supporting the same conclusion).

⁹ In the *Third Report and Order*, the Commission uses the term "wireless provider" to mean Commercial Mobile Radio Service (CMRS) provider as defined in 47 CFR § 9.3. The Commission defines a "[n]ationwide CMRS provider" as "[a] CMRS provider whose service extends to a majority of the population and land area of the United States. CMRS providers as those providers whose service extends to a majority of the population and land area of the United States." A "[n]on-nationwide CMRS provider" for purposes of the rule is "[a]ny CMRS provider other than a nationwide CMRS provider." See Appx. A (new 47 CFR § 52.202).

¹⁰ The Commission defines "Lifeline Administrator" as the entity that "controls the 988 call routing platform pursuant to contract with the Substance Abuse Mental Health Services Administration." See Appx. A (new 47 CFR § 52.202).

¹¹ RWA Comments at 2 (arguing that the Commission should "allow small rural CMRS non-nationwide providers the flexibility to choose the georouting solution that works best for their circumstances"); Southern Linc Reply at 2 (arguing that the Commission should "provide flexibility with respect to the georouting solution that may be implemented"); CCA Reply at 2 ("If the Commission were to decide to implement rules, however, it should adopt general rules that allow flexibility for all carriers and that take into consideration their individual networks, the limitations of currently available 988 georouting solutions, and the challenges such rules would pose on non-nationwide providers.").

¹² RWA Comments at 1.

solutions.¹³ Several commenters also urged the Commission to give non-nationwide CMRS providers sufficient time to implement georouting solutions.¹⁴ The approach taken by the *Third Report and Order* addresses these comments by adopting rules that allow wireless providers to build on the success of georouting solutions that have been developed with SAMHSA and the Lifeline Administrator, while also providing the flexibility for small and other providers to implement georouting solutions that account for their network capabilities and are compatible with the Lifeline’s routing platform.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹⁵ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁹

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.²⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.²¹ These types of small

¹³ *Id.* at 1-2.

¹⁴ Comtech Comments at 8-9; RWA Comments at 1-2; CCA Reply at 2; CTIA Reply at 7; RWA Reply at 4; Southern Linc Reply at 4; CTIA Reply at 7.

¹⁵ 5 U.S.C. § 604(a)(3).

¹⁶ *Id.* § 604(a)(4).

¹⁷ *Id.* § 601(6).

¹⁸ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁹ 15 U.S.C. § 632.

²⁰ 5 U.S.C. § 601(3)-(6).

²¹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.²²

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.²⁴ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.²⁵

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁶ U.S. Census Bureau data from the 2022 Census of Governments²⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁸ Of this number, there were 36,845 general purpose governments (county,²⁹ municipal, and town or township³⁰) with populations of

²² *Id.*

²³ 5 U.S.C. § 601(4).

²⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

²⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

²⁶ 5 U.S.C. § 601(5).

²⁷ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

²⁸ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

²⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

³⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

less than 50,000 and 11,879 special purpose governments (independent school districts³¹) with enrollment populations of less than 50,000.³² Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”³³

11. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with a SBA small business size standard applicable to these service providers.³⁴ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁶ Of this number, 2,837 firms employed fewer than 250 employees.³⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.³⁸ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

12. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission’s rules.⁴⁰ Wireless Telecommunications Carriers (*except Satellite*)⁴¹ is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it

³¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

³² While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

³³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

³⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, *Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁹ *Id.*

⁴⁰ See 47 CFR §§ 27.1 – 27.1607.

⁴¹ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

has 1,500 or fewer employees.⁴² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁴³ Of this number, 2,837 firms employed fewer than 250 employees.⁴⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

13. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.⁴⁵

14. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

15. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁴⁶ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁴⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁴⁸ Of this number, 2,837 firms employed fewer than 250 employees.⁴⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁵⁰ Of these providers, the Commission estimates that 255

⁴² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

⁴⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), (continued....)

providers have 1,500 or fewer employees.⁵¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁵² Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁵³ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵⁵ Of that number, 2,837 firms employed fewer than 250 employees.⁵⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁵⁷ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁵⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁵⁹ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁶⁰ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁶¹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁶²

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<https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵¹ *Id.*

⁵² See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁵³ *Id.*

⁵⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁸ *Id.*

⁵⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax (continued....)

18. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁵ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁶⁶ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁶⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers⁶⁸ is the closest industry with an SBA small business size standard.⁶⁹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁷⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷² Of this number, 2,964 firms operated with fewer than 250 employees.⁷³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.⁷⁴ Of these providers, the Commission estimates that 4,146 providers have 1,500 or

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CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁶³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁷ *Id.*

⁶⁸ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁰ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁷¹ *Id.*

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), (continued....)

fewer employees.⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁷⁶ is the closest industry with an SBA small business size standard.⁷⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁸¹ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁸² Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

21. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁸³ Wired Telecommunications Carriers⁸⁴ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁸⁶ Of this number, 2,964 firms operated with fewer than

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<https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁵ *Id.*

⁷⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁸ *Id.*

⁷⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸² *Id.*

⁸³ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

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250 employees.⁸⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.⁸⁸ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁸⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁹⁰ is the closest industry with a SBA small business size standard.⁹¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁹² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁹³ Of this number, 2,964 firms operated with fewer than 250 employees.⁹⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁹⁵ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

23. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁹⁶ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁹⁷ Establishments in this industry resell telecommunications; they

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<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁸⁹ *Id.*

⁹⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁹¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁹² *Id.*

⁹³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁵ 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>.

⁹⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁹⁷ *Id.*

do not operate transmission facilities and infrastructure.⁹⁸ Mobile virtual network operators (MVNOs) are included in this industry.⁹⁹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.¹⁰⁰ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.¹⁰¹ Of that number, 1,375 firms operated with fewer than 250 employees.¹⁰² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.¹⁰³ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.¹⁰⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers¹⁰⁵ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.¹⁰⁶ Mobile virtual network operators (MVNOs) are included in this industry.¹⁰⁷ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.¹⁰⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.¹⁰⁹ Of that number, 1,375 firms operated with fewer than 250 employees.¹¹⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.¹¹¹ Of these providers, the Commission

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

¹⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰³ 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>.

¹⁰⁴ *Id.*

¹⁰⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

¹⁰⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹¹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), (continued....)

estimates that 438 providers have 1,500 or fewer employees.¹¹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers¹¹³ is the closest industry with a SBA small business size standard.¹¹⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹¹⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.¹¹⁶ Of this number, 2,964 firms operated with fewer than 250 employees.¹¹⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.¹¹⁸ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.¹¹⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

26. *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.¹²⁰ 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.¹²¹ 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.¹²² The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹²³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry

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<https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹¹² *Id.*

¹¹³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"*
<https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹¹⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹¹⁵ *Id.*

¹¹⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,
<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie>
[w=false](https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie). At this time, the 2022 Economic Census data is not available.

¹¹⁷ *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.

¹¹⁸ 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>.

¹¹⁹ *Id.*

¹²⁰ See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"*
<https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

that operated for the entire year.¹²⁴ Of those firms, 1,039 had revenue of less than \$25 million.¹²⁵ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

27. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹²⁶ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹²⁷ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁸ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁹ Of this number, 624 firms had fewer than 250 employees.¹³⁰ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

28. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.¹³¹ Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.¹³² The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small.¹³³ U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.¹³⁴ Of this total, 673 firms operated with fewer than 250 employees.¹³⁵ Thus under the SBA

¹²⁴ 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.

¹²⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

¹²⁶ See U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹²⁷ *Id.*

¹²⁸ See 13 CFR § 121.201, NAICS Code 334220.

¹²⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹³⁰ *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.

¹³¹ See U.S. Census Bureau, *2017 NAICS Definition, “334413 Semiconductor and Related Device Manufacturing,”* <https://www.census.gov/naics/?input=334413&year=2017&details=334413>.

¹³² *Id.*

¹³³ See 13 CFR § 121.201, NAICS Code 334413.

¹³⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334413, <https://data.census.gov/cedsci/table?y=2017&n=334413&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

size standard, the majority of firms in this industry can be considered small.

29. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.¹³⁶ Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.¹³⁷ These establishments may design, develop, and publish, or publish only.¹³⁸ The SBA small business size standard for this industry classifies businesses having annual receipts of \$47 million or less as small.¹³⁹ U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.¹⁴⁰ Of this number 7,226 firms had revenue of less than \$25 million.¹⁴¹ Based on this data, we conclude that a majority of firms in this industry are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. The *Third Report and Order* adopts rules that require small and other wireless providers to implement georouting solutions for wireless 988 calls. Specifically, the *Third Report and Order* requires providers to have the capability to provide georouting data with 988 calls to the Lifeline Administrator in a format that is compatible with the Lifeline's routing platform. Additionally, small and other providers must provide georouting data, when available, with 988 calls sufficient to allow routing of the 988 call by the Lifeline Administrator to the appropriate crisis center based on the geographic area where the handset is located at the time the 988 call is initiated. The *Third Report and Order* also adopts a definition of georouting data that requires wireless providers to aggregate location data generated from cell-based location technology to a level that will not identify the location of the cell site or base station receiving the 988 call or otherwise identify the precise location of the handset.

31. In the *988 Georouting Second Further Notice*, the Commission sought comment on the costs and benefits of deploying georouting solutions to help the Commission evaluate the impact of relevant proposals on small entities. We recognize that small providers may face operational limitations and costs when implementing georouting solutions for wireless 988 calls. However, the record reflects that nationwide CMRS providers have already developed and implemented or are in the process of implementing georouting solutions for wireless 988 calls, which can minimize cost implications for small entities by serving as models for georouting solutions. The *Third Report and Order* adopts rules that allow wireless providers flexibility to leverage these georouting solutions, and we expect that our approach will reduce compliance costs for wireless providers, including small entities. Moreover, we estimate that the public safety benefits resulting from the requirements adopted in the *Third Report and*

(Continued from previous page) _____

¹³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁶ See U.S. Census Bureau, *2017 NAICS Definition, "511210 Software Publishers,"* <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See 13 CFR § 121.201, NAICS Code 511210 (as of 10/1/22 NAICS Code 513210).

¹⁴⁰ 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 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

Order far exceed implementation costs.¹⁴²

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. 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.”¹⁴³

33. The *Third Report and Order* adopts rules that are designed to give flexibility where appropriate to ensure that wireless providers, including small providers, can determine the best approach for compliance based on the needs of their networks. The *Third Report and Order* considers comments advocating for allowing the deployment of georouting solutions for wireless 988 calls on a purely voluntary basis. We conclude, however, that purely voluntary implementation undermines our goal of ensuring that the clear public interest benefits of georouting are realized nationwide in a timely manner. The *Third Report and Order* also declines to exempt non-nationwide CMRS providers as requested by RWA,¹⁴⁴ but instead adopts flexible requirements that allow small and other wireless providers to leverage the georouting solutions that have been developed by nationwide providers in collaboration with SAMHSA and the Lifeline Administrator to implement technically feasible solutions that are compatible with the Lifeline’s routing platform.

34. With respect to “georouting data,” the *Third Report and Order* adopts a definition that balances the need to maintain callers’ privacy by not requiring wireless providers to transmit more precise geolocation data with wireless 988 calls, while still ensuring that the 988 Lifeline has sufficient aggregated location data to route wireless 988 calls to geographically appropriate crisis centers. We decline to require wireless providers to use a specific method for aggregating cell-based location data or to mandate one particular geographic boundary for georouting solutions, minimizing potential burdens by allowing small and other wireless providers flexibility to employ technically feasible options that are best suited for their networks to meet this requirement.

35. The *Third Report and Order* further minimizes the potential burdens of wireless providers, including small providers, by excluding 988 calls transmitted using roaming capabilities from application of the georouting requirements to account for technical limitations identified in the record. The *Third Report and Order* declines, however, to limit the application of georouting rules to voice calls carried end-to-end on IP networks, as requested by some commenters.¹⁴⁵ Instead, we adopt requirements that minimize potential burdens by giving wireless providers the flexibility to work with the Lifeline Administrator on a case-by-case basis to address any individualized network considerations and by providing non-nationwide providers with an ample compliance time frame to develop technical solutions.

36. The *Third Report and Order* considers alternative georouting solutions that bypass the 988 Lifeline’s centralized routing system but concludes that the benefits of centralized routing far

¹⁴² *Third Report and Order* Section III.K.

¹⁴³ 5 U.S.C. § 604(a)(6).

¹⁴⁴ RWA Comments at 5 (arguing that “[r]equiring that small rural non-nationwide CMRS providers implement 988 georouting for all wireless calls at this time would be premature” and that “these providers should be specifically exempted from any mandate imposed on other wireless carriers”).

¹⁴⁵ See CTIA Comments at 6 (arguing that “any Commission-imposed georouting requirements should be limited to voice calls initiated, maintained, and terminated (i.e., carried end-to-end) on IP-based networks”); CCA Reply at 4 (stating that “[c]urrent 988 georouting solutions utilize the capabilities of IP-based networks from call origination through termination”); CTIA Reply at 6 (stating that current georouting solutions “are premised on the IP-based capabilities of the 988 Lifeline, its vendors, and wireless networks”).

outweigh the costs of localized routing. Specifically, we find that maintaining the 988 Lifeline's centralized routing process will help preserve the Lifeline Administrator's critical role in routing 988 calls to crisis centers, simplify the administration of the Lifeline, and allow for faster implementation of georouting solutions.

37. With respect to compliance timelines, the *Third Report and Order* adopts an implementation time frame for nationwide CMRS providers that aligns with the timelines identified for deploying the georouting solutions developed in coordination with SAMHSA and the Lifeline Administrator. To further reduce the burden on small entities and address technical and resource challenges, we grant a longer compliance timeline to non-nationwide CMRS providers. Specifically, we establish an implementation time frame following the effective date of the georouting rule of 30 days for nationwide CMRS providers and 24 months for all non-nationwide CMRS providers.

38. Further, the *Third Report and Order* gives wireless providers flexibility to implement georouting solutions that may require broader routing requirements by revising existing 988 voice and texting rules to permit routing to the national suicide prevention and mental health crisis hotline system without need for translation to the toll free access number. Finally, we decline the National Emergency Number Association's (NENA) request to establish an expiration date for the georouting requirements set forth in the *Third Report and Order*, but may consider technological developments in the future.¹⁴⁶

G. Report to Congress

39. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁴⁷ In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁴⁸

¹⁴⁶ NENA Comments at 7.

¹⁴⁷ 5 U.S.C. § 801(a)(1)(A).

¹⁴⁸ *Id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Implementation of the National Suicide Hotline Improvement Act of 2018 Third Further Notice of Proposed Rulemaking (Third 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 for comments in the *Third Further Notice*. The Commission will send a copy of the *Third Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Third Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Third Further Notice*, we propose to require 988 covered text providers⁴ to support georouting in order to ensure that the 988 Lifeline may route covered 988 text messages⁵ to the appropriate local crisis center and enhance the support and resources available to text users in crisis. Currently, covered 988 text messages are routed to local crisis centers using information conveyed by the number assigned to the device, such as the area code,⁶ which in many cases will not reflect the current location of the device user.⁷ Mental health and crisis counseling experts have opined that connecting callers in crisis with local crisis centers is important to connect life-saving services to those in need of public health and safety resources and enable them to speak with local counselors who may be more familiar with cultural issues or community stressors in the caller's area.⁸ To better connect 988 text users with local crisis resources, we propose to adopt and seek comment on a two-part requirement for covered text providers to: (1) have the capability to provide georouting data with covered 988 text messages to the Lifeline Administrator; and (2) provide georouting data, when available, with covered 988 text messages to the Lifeline Administrator. Covered text providers would be required to comply with this requirement six months from the effective date of final rules.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 845 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 CFR § 52.201(c) (defining “covered text provider” as including “all [Commercial Mobile Radio Service (CMRS)] providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones”).

⁵ 47 CFR § 52.201(c) (defining “covered 988 text messages” as a “988 text message in [Short Message Service (SMS)] format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers”).

⁶ Crisis Text Line Comments at 2.

⁷ *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Second Further Notice of Proposed Rulemaking, FCC 24-45, 2024 WL 1905193, at *3, para. 7 (rel. Apr. 26, 2024) (*988 Georouting Second Further Notice*).

⁸ See *id.* at *1, para. 2.

B. Legal Basis

3. The proposed action is authorized under sections 1, 2, 4, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 615c.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹¹ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹²

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹³ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁴ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁵

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁶ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁷ Nationwide, for tax year 2022, there

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ *Id.* 5 U.S.C. § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹² 15 U.S.C. § 632.

¹³ 5 U.S.C. § 601(3)-(6).

¹⁴ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 601(4).

¹⁷ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁸

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁹ U.S. Census Bureau data from the 2022 Census of Governments²⁰ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²¹ Of this number, there were 36,845 general purpose governments (county,²² municipal, and town or township²³) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁴) with enrollment populations of less than 50,000.²⁵ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁶

¹⁸ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁹ 5 U.S.C. § 601(5).

²⁰ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

²¹ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

²² See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²³ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²⁴ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²⁵ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁶ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁷ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²⁸ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁰

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³² Of this number, 2,964 firms operated with fewer than 250 employees.³³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.³⁴ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³⁶ is the closest industry with an SBA small business size standard.³⁷ Wired

²⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

³¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³³ *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.

³⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³⁵ *Id.*

³⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁴¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.⁴² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴⁴ is the closest industry with an SBA small business size standard.⁴⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁹ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁵⁰ Consequently, using the SBA's small business size standard, the

³⁸ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁹ *Id.*

⁴⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴² 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>.

⁴³ *Id.*

⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁶ *Id.*

⁴⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁰ *Id.*

Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁵¹ Wired Telecommunications Carriers⁵² is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁵ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.⁵⁶ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁸ is the closest industry with a SBA small business size standard.⁵⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶²

⁵¹ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁵² See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁷ *Id.*

⁵⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁰ *Id.*

⁶¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁶³ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

14. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁶⁴ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁶⁵ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁶ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁷ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁹ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁷¹ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁷² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁷³ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they

⁶³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁹ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷² *Id.*

⁷³ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

do not operate transmission facilities and infrastructure.⁷⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷⁶ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁹ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁸⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁸¹ is the closest industry with a SBA small business size standard.⁸² The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸³ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁵ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸⁶ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁰ *Id.*

⁸¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸³ *Id.*

⁸⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁸⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁶ 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>.

⁸⁷ *Id.*

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸⁸ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁹ Mobile virtual network operators (MVNOs) are included in this industry.⁹⁰ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁹¹ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁹² Of that number, 1,375 firms operated with fewer than 250 employees.⁹³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁹⁴ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁹⁶ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁹⁷ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁹⁹ Of that number, 2,837 firms employed fewer than 250

⁸⁸ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁹² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

⁹³ *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.

⁹⁴ 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>.

⁹⁵ *Id.*

⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁷ *Id.*

⁹⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

employees.¹⁰⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.¹⁰¹ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹⁰² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁰³ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.¹⁰⁴ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁰⁵ The SBA small business size standard for this industry classifies firms with annual receipts less than \$47 million as small.¹⁰⁶ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹⁰⁷ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.¹⁰⁸ Based on this data, the Commission estimates that a majority of firms in this industry are small.

20. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁰⁹ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁰ Of these, only seven have more than 400,000

¹⁰⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁰² *Id.*

¹⁰³ See U.S. Census Bureau, 2017 NAICS Definition, "515210 Cable and Other Subscription Programming," <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹⁰⁷ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

¹⁰⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰⁹ 47 CFR § 76.901(d).

¹¹⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

subscribers.¹¹¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹² Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹¹³ Of these, about 639 have more than 15,000 subscribers.¹¹⁴ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

21. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹¹⁵ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹¹⁶ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹¹⁷ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹¹⁸ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. *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.¹¹⁹ 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.¹²⁰ 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.¹²¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million

¹¹¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹² 47 CFR § 76.901(c).

¹¹³ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹¹⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

¹¹⁵ 47 U.S.C. § 543(m)(2).

¹¹⁶ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

¹¹⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹⁸ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

¹¹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹²⁰ *Id.*

¹²¹ *Id.*

or less as small.¹²² U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹²³ Of those firms, 1,039 had revenue of less than \$25 million.¹²⁴ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

23. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹²⁵ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹²⁶ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁷ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁸ Of this number, 624 firms had fewer than 250 employees.¹²⁹ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

24. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.¹³⁰ Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.¹³¹ The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small.¹³² U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.¹³³ Of this total, 673 firms operated with fewer than 250 employees.¹³⁴ Thus under the SBA size standard, the majority of firms in this industry can be considered small.

¹²² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹²³ 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.

¹²⁴ *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.

¹²⁵ See U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹²⁶ *Id.*

¹²⁷ See 13 CFR § 121.201, NAICS Code 334220.

¹²⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹²⁹ *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.

¹³⁰ See U.S. Census Bureau, *2017 NAICS Definition, “334413 Semiconductor and Related Device Manufacturing,”* <https://www.census.gov/naics/?input=334413&year=2017&details=334413>.

¹³¹ *Id.*

¹³² See 13 CFR § 121.201, NAICS Code 334413.

¹³³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334413,

(continued....)

25. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.¹³⁵ Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.¹³⁶ These establishments may design, develop, and publish, or publish only.¹³⁷ The SBA small business size standard for this industry classifies businesses having annual receipts of \$47 million or less as small.¹³⁸ U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.¹³⁹ Of this number 7,226 firms had revenue of less than \$25 million.¹⁴⁰ Based on this data, we conclude that a majority of firms in this industry are small.

26. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁴¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁴² For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴³ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴⁴ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

27. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹⁴⁵ Providers of wired

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<https://data.census.gov/cedsci/table?y=2017&n=334413&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁵ See U.S. Census Bureau, *2017 NAICS Definition, "511210 Software Publishers,"* <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See 13 CFR § 121.201, NAICS Code 511210 (as of 10/1/22 NAICS Code 513210).

¹³⁹ 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 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVfirm&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹⁴⁰ *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.

¹⁴¹ See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVfirm, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVfirm&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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.

¹⁴⁵ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁴⁶ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹⁴⁷ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹⁴⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁴⁹ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁵⁰

28. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹⁵¹ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,¹⁵² we believe that the majority of wireline Internet access service providers can be considered small entities.

29. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*¹⁵³ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹⁵⁴ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection

¹⁴⁶ See 47 CFR § 1.7001(a)(1).

¹⁴⁷ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁴⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁴⁹ See U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹⁵⁰ *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.

¹⁵¹ See Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁵² See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7 (2022) (2022 *Communications Marketplace Report*).

¹⁵³ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹⁵⁴ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

under the Commission's rules.¹⁵⁵ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁵⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁵⁸ Of that number, 2,837 firms employed fewer than 250 employees.¹⁵⁹

30. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁶⁰ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁶¹ as well as on terrestrial fixed wireless broadband providers in general,¹⁶² we believe that the majority of wireless Internet access service providers can be considered small entities.

31. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁶³ The SBA small business size standard for this industry classifies firms with annual receipts of \$47 million or less as small.¹⁶⁴ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁶⁵ Of those firms, 556 had revenue of less than \$25 million.¹⁶⁶ Consequently, we estimate that the majority of firms in this industry are small entities.

¹⁵⁵ See 47 CFR § 1.7001(a)(1).

¹⁵⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁵⁹ *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.

¹⁶⁰ See *IAS Status 2019*, Fig. 30.

¹⁶¹ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁶² *Id.* at 8, para. 22.

¹⁶³ See U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁶⁴ See 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁶⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁶⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual

(continued....)

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. The *Third Further Notice* proposes and seeks comment on implementing new georouting rules for covered 988 text messages, that if adopted, may impose new or modified compliance obligations on small entities. In particular, we propose to require covered text providers to have the capability to provide and to actually provide georouting data to the 988 Lifeline with covered texts, when such information is available. We also propose that covered text providers be subject to georouting requirements to the same extent that they are currently required to send covered 988 texts to the 988 Lifeline. Covered text providers would be required to comply with this requirement six months from the effective date of final rules. In addition, we tentatively conclude that, at a minimum, Commercial Mobile Radio Service (CMRS) providers must support georouting for Short Message Service (SMS) text formats to the Lifeline.

33. The record in this proceeding indicates small providers may face various barriers to compliance,¹⁶⁷ however it does not currently contain detailed information on the costs for covered text providers to implement georouting for covered 988 text messages. Therefore, at this time, the Commission is not in a position to determine whether implementation of georouting for covered 988 text messages would result in significant costs for covered text providers. To help the Commission more fully evaluate the cost of compliance, we seek additional detailed information on various cost issues implicated by our proposed rules. Specifically, we have requested information on technological challenges and the costs for covered text providers to implement georouting for covered 988 text messages. We expect the information that we receive in response to our requested cost inquiries will help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the proposals and inquiries we make in the *Third Further Notice* to implement georouting for covered 988 text messages.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. 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 or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.¹⁶⁸

35. In the *Third Further Notice*, the Commission seeks comment from all entities, including small entities, regarding the impact of the proposed rules on small entities. The Commission seeks comment on the impact, cost or otherwise, that requiring georouting for text-to-988 will impose on regional and rural carriers and small businesses. The Commission also seeks comment on whether to limit the scope of the georouting rule to one or more specific text formats, such as SMS, or to certain types of covered text providers, such as CMRS providers or covered text providers that have access to cellular networks. We will also consider whether the rule should require covered text providers provide georouting data with covered 988 texts “when available” as proposed, or instead provide georouting data with texts to 988 “when technically feasible.” Further, the Commission asks whether to extend

(Continued from previous page) —————
companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁶⁷ *Third Further Notice* para. 97 (discussing costs for implementation and compliance).

¹⁶⁸ 5 U.S.C. § 603(c)(1)-(4).

compliance time frames for different kinds of covered text providers, such as nationwide or non-nationwide CMRS providers or other kinds of interconnected text providers.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

36. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Third Report and Order and Third Further Notice of Proposed Rulemaking (October 17, 2024).

Yesterday I was in California. I joined Department of Health and Human Services Secretary Becerra and Congressman Cárdenas and visited Sycamores, a community-based resource center that helps adults, children, and families through some of their darkest and most difficult times. Sycamores is rooted in Los Angeles. They know what is happening in their backyard, they know what their neighbors need, and they have mobile mental health teams ready to provide on-the-ground assistance. I got to see how they work and how they deploy when crisis calls in their community.

When the original Suicide and Crisis Lifeline was launched in 2005, it was a ten-digit number, and the system used the area code associated with your phone number to route your call so those who answered could help nearby. Back then, when most calls came from a landline, routing by area code made sense. But times change. Today, thanks to a multi-year effort of the Federal Communications Commission, the ten-digit Lifeline is now an easy-to-remember three-digit number—988—and 80 percent of the calls to 988 now come from a wireless phone.

For so many people, the area code on our wireless phones no longer matches the place where we live. That means if you have a phone number from Maryland, but moved to California, and dialed 988 in crisis, you would still be routed to a center providing assistance in Maryland. Counselors in Maryland would still do their best to assist you, but it goes without saying that they won't be in a position to connect you with local resources like Sycamores in California.

This is a mismatch we should fix. We can save more lives by getting more people who dial the Suicide and Crisis Lifeline connected to resources that are local. That is where georouting fits in. When georouting is used, wireless calls to 988 are routed to call centers based not on the area code but instead on the nearby towers that wireless calls use to connect. This provides a more accurate picture of a caller's general location, while still protecting their privacy. More importantly, georouting means those responding to 988 inquiries have a lot more knowledge of local resources and events and are better equipped to assist the caller with getting the help they need.

We have already made real headway getting georouting in place for 988 calls. The Federal Communications Commission has been working with our federal partners at the Department of Health and Human Services and the Substance Abuse and Mental Health Services Administration to implement this technology. Last year I kicked this effort off by writing letters to the nationwide wireless providers urging them to explore georouting with development, testing, and trials. That work has paid off, with two nationwide wireless providers launching georouting for 988 calls last month, and a third provider coming on board shortly. I am grateful for this progress. But we cannot fall back. We need to make sure everyone calling 988 from a wireless phone can get connected to help that is nearby. So today we are setting clear deadlines for wireless providers across the country to implement georouting for calls to the Suicide and Crisis Lifeline.

Still, we are not stopping here. There is more we can do to keep improving access to 988 and making sure those who reach out in crisis get the local support they need.

Years ago, I led this agency's work to support texting to 988—expanding the Lifeline to take more than just traditional phone calls. After all, this is the primary way so many of us communicate today, especially young people. So in addition to requiring georouting for 988 calls, today we are launching a rulemaking to determine how best to implement georouting for 988 texts. Texting technology is different, and presents special challenges because texts contain unique information and move along a different pathway than calls. So while the Lifeline's Administrator can receive texts to 988, there is currently no way to also receive georouting data from the text's sender. But when there's a will,

there's a way. We are not going to stop working to improve the Lifeline until everyone gets access to the local help they need.

I want to thank Congressman Cárdenas and Secretary Becerra for joining me at Sycamores and for being such terrific champions for 988. Their drive to set up and improve the three-digit Lifeline is a big reason why we are here today. I also want to thank Senator Padilla and Senator Tillis for their support on Capitol Hill. Most of all, thank you to Sycamores for the gracious way they opened their doors for us, and for the heroic care and services they and so many others like them around the country provide to people in their community.

Finally, I am grateful for the staff responsible for this effort, including Callie Coker, Jesse Goodwin, Trent Harkrader, Heather Hendrickson, Jesse Jachman, Jodie May, Christi Shewman, and Merry Wulff from the Wireline Competition Bureau; Brenda Boykin, John Evanoff, David Furth, Timothy Hoseth, Renee Roland, Rasoul Safavian, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Garnet Hanly, Leon Jackler, John Lockwood, and Susan Mort from the Wireless Telecommunications Bureau; Terry Cavanaugh, Douglas Klein, Richard Mallen, Erika Olsen, Elliot Tarloff, and Chin Yoo from the Office of General Counsel; Stacy Jordan, Eugene Kiselev, and Eric Ralph from the Office of Economics and Analytics; and Michael Gussow and Jocelyn James from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Third Report and Order and Third Further Notice of Proposed Rulemaking (October 17, 2024).

On August 14, 2018, President Trump signed into law the National Suicide Hotline Improvement Act, requiring that the FCC and SAMHSA study the feasibility of designating a 3-digit dialing code for access to suicide prevention and mental health services. The FCC under Chairman Pai's leadership quickly rolled up its sleeves and got to work, examining the potential impact such a code could have on suicide prevention. The following year, Chairman Pai proposed that the FCC move forward with the necessary steps to establish 988 as the national 3-digit code to access the National Suicide Prevention Lifeline.

This easy-to-remember number has become more than a lifeline for individuals in crisis—indeed, in just two short years since its launch on July 16, 2022, counselors have answered more than 10 million calls, texts, and chats from people seeking help with suicidal thoughts and mental health-related crises.

But our work has not stopped. Today's item continues to build on the foundation that was laid by ensuring that individuals in crisis are properly routed to a nearby helpline center so that they can receive the most relevant support and information available. This will undoubtedly save additional lives and have a lasting impact on the success of 988. So I want to thank Chairwoman Rosenworcel for her work and leadership on this issue. And I want to thank the staff of the Wireline Competition Bureau for their continued efforts to make 988 as successful as envisioned. The item has my support.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Third Report and Order and Third Further Notice of Proposed Rulemaking (October 17, 2024).

The 988 Lifeline is made of up more than 200 crisis centers across the country. Last week, I was fortunate enough to visit one of them.

Lines for Life in Portland, Oregon is dedicated to preventing substance abuse and suicide and promoting mental wellness through intervention, prevention, and advocacy. As the largest 988 center in Oregon, it fields calls from 34 of the state's 36 counties. Through the power of its 270 employees, 90 full-time call responders, and 80 volunteers, Lines for Life effectively responds to more than 60,000 calls per year.

On my visit, I had the chance to speak with Debbie. She started out as a volunteer, and has handled thousands of calls over the years – the most at Lines for Life. Now she's one of the center's leaders, and helps train other call takers. Debbie told me about the necessity of matching 988 callers with local responders, saying "we have our fingers on the pulse of the mental health resources in the area." Without missing a beat, her coworker Alexis added that "we have it on a county-by-county basis." Through their years of experience, Debbie, Alexis, and the entire Lines for Life team know the best way to help someone in crisis is to connect them with the resources right in their own community. Whether that's mental health counseling, addiction services, or housing resources, the Lines for Life team is best prepared to match callers with the local assets most equipped to assist a caller.

That's why the action we're taking today is so important. It will make sure that the many, many Americans who reach out to 988 on what could be the darkest day of their life are heard by local counselors like Debbie and Alexis, who understand what they are going through and know how to get them the resources they need the most.

The Lines for Life team also highlighted their work with the numerous tribes that live in the Pacific Northwest. However, their description of their efforts here had a familiar refrain: the lack of connectivity on Tribal land limits Lines for Life's ability to recommend certain resources, like virtual therapy or other telehealth options. We must ensure that all Americans have access to high-speed internet.

Lines for Life also operates the innovative Youthline service, a free teen-to-teen crisis support and help line. Youthline connects teens and young adults to trained peers that help address everything from anxiety and loneliness to sexual orientation to depression and suicidal ideation. At Youthline, I spoke with Morgan, a manager who told me the center's young volunteers impressed her every single day with "their capacity for compassion, understanding, and healing." I had the privilege to sit down with one of those volunteers named Julie. I asked her why she got involved with Youthline and her response was something I'll never forget. She said she volunteered because she wanted to "help kids understand that they are not broken."

* * *

Thank you to the Chairwoman, and to all of the Commission staff who worked on this item. It has my full support.

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

In the Matter of	)	
	)	
Achieving 100% Wireless Handset Model	)	WT Docket No. 23-388
Hearing Aid Compatibility	)	

REPORT AND ORDER

Adopted: October 17, 2024

Released: October 18, 2024

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. Today, we advance our goal of ensuring that all Americans can access communications services on an equal basis by fulfilling the Commission's longstanding commitment to establish a 100% hearing aid compatibility requirement that applies to all future wireless handset models offered for sale or use in the United States.¹ By our actions today, 48 million Americans with hearing loss will be able to choose among the same handset models that are available to consumers without hearing loss.² No longer will they be limited in their choice of technologies, features, and prices available in the handset model marketplace. Further, our rules will encourage handset manufacturers to move away from proprietary Bluetooth coupling standards and ensure more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids. In order to ensure that older hearing aid compatible handset models, which tend to be lower priced, continue to be available for consumers to purchase, we provide for a phase-out period while these handset models are gradually replaced with new handset models that meet the latest certification standards. In addition, we strengthen wireless handset accessibility to encompass not only compatibility that benefits consumers who use hearing aids, but also a 100% volume control requirement for new handsets that benefits all consumers with hearing loss.³ Finally, we adopt revised labeling and website posting requirements that allow consumers to have access to the information that they need to make informed handset model purchasing decisions.

2. The revisions that we adopt today to our hearing aid compatibility rules are based in part on the collaborative efforts of members of the Hearing Aid Compatibility Task Force (HAC Task Force), who worked together over a period of years to reach a consensus on how the Commission could achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States.⁴ The HAC Task Force, an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers, was formed for the purpose of reporting to the Commission on whether requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable objective. The HAC Task Force's Final Report represents consensus recommendations for how the Commission can achieve this objective.

3. We are committed to continuing to ensure that our wireless hearing aid compatibility provisions evolve to keep pace with technological advances in the ways handset models pair with hearing aids, and we will continue to monitor and update our hearing aid compatibility rules as circumstances warrant.

¹ See 47 U.S.C. § 610(b)(2)(B) (the Commission shall periodically assess the appropriateness of the hearing aid compatibility rules); see also 47 U.S.C. § 610(b)(1)(B) (hearing aid compatibility requirements apply to handset models manufactured in the United States—other than for export—or imported for use in the United States). See, e.g., *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753 (2003) (*2003 HAC Order*); *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, 23 FCC Rcd 3406 (2008) (*2008 HAC Order*); *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336 (2016) (*2016 HAC Order*).

² See Accessibility Advocates Comments at 1, 28 (there are 48 million Americans with hearing loss, including deaf, hard of hearing, late-deafened, and deaf-disabled).

³ The Commission has long considered the scope of hearing aid compatibility to include compatibility with cochlear implants. See, e.g., *2003 HAC Order*, 18 FCC Rcd at 16754, para. 2. Accordingly, our determinations in this Report and Order apply equally to cochlear implants as well as to hearing aids. *Id.*, see also Appendix B, Final Rules, section 20.19(a).

⁴ Hearing Aid Compatibility Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022) (*HAC Task Force Final Report*); see also *2016 HAC Order*, 31 FCC Rcd at 9337, para. 3.

II. SUMMARY

4. Based on the HAC Task Force's recommendations and the record in this proceeding, we determine that requiring 100% of all handset models to be certified as hearing aid-compatible is consistent with section 710(e) of the Communications Act of 1934, amended.⁵ As part of this determination, we adopt the forward-looking definition of hearing aid compatibility that the HAC Task Force recommends, and we incorporate this definition into our rules. In order to keep pace with consumer pairing preferences, we adopt a coupling requirement based on Bluetooth technology standards that meet the requirements of our expanded definition of hearing aid compatibility and certain functional requirements. Further, as we proposed in the *100% HAC Notice*, we require handset manufacturers to transition to our 100% hearing aid compatibility requirement within a 24-month transition period and nationwide service providers to do so within a 30-month transition period.⁶ We will allow non-nationwide service providers to transition to our 100% hearing aid compatibility requirement over a 42-month transition period.⁷ These robust transition periods will ensure that consumers with hearing loss promptly receive the benefits of our 100% hearing aid compatibility requirement.

5. After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR, part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exceptions.⁸ Further, after passage of the relevant transition period, handset manufacturers and service providers must ensure that each handset model in their portfolios has at least two ways to pair with hearing aids. Specifically, after the relevant transition period is completed, 100% of all handset models in a portfolio must meet acoustic coupling standards and 85% of these same handset models must also meet telecoil coupling standards. The remaining 15% of these handset models must meet our new Bluetooth coupling requirement, along with acoustic standards; these handsets may also contain telecoils, but they are not required to include them.

6. We also adopt a 48-month transition period to a non-proprietary Bluetooth coupling requirement. During this 48-month transition period, handset manufacturers and service providers may meet our 15% Bluetooth coupling requirement using either proprietary or non-proprietary Bluetooth coupling technology. Once the 48-month transition period expires, only non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and specified Bluetooth functionality requirements will satisfy our 15% Bluetooth coupling requirement. The non-proprietary Bluetooth coupling technology must be completely independent of proprietary standards and could be met, for example, by using such standards as Bluetooth Low Energy Audio (Bluetooth LE Audio) and the related Bluetooth Hearing Access Profile (Bluetooth HAP).⁹ Our approach will benefit consumers by

⁵ 47 U.S.C. § 610(e).

⁶ *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, WT Docket No. 23-388, Notice of Proposed Rulemaking, FCC 23-108, at 27, para. 89 (Dec. 12, 2023) (*100% HAC Notice*).

⁷ A nationwide service provider refers to a commercial mobile radio service provider that offers such service nationwide. A non-nationwide service provider refers to a commercial mobile radio service provider that does not offer such service nationwide. See Appendix B, Final Rules, section 20.19(a); see also *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228, Report and Order, 33 FCC Rcd 11549, 11552, para. 9 & n.23 (2018) (*2018 HAC Order*).

⁸ A handset model portfolio refers to all of the handset models that a handset manufacturer or service provider offers for sale or use in the United States. See Appendix B, Final Rules, section 20.19(a); see also *2016 HAC Order*, 31 FCC Rcd at 9346, 9346-47, 9353-54 & n.110, paras. 27, 29, 43 & n.110.

⁹ Bluetooth LE Audio is the next generation of Bluetooth Audio, making audio streaming over Bluetooth Low Energy possible. It enhances performance in power consumption, latency, and bandwidth. See Nordic Semiconductor, *Bluetooth LE Audio, Better audio quality, longer playtime and new features*, <https://www.nordicsemi.com/Products/Wireless/Bluetooth-LE-Audio> (lasted visited Oct. 10, 2024). Bluetooth HAP (continued....)

ensuring more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids, and will help to address the issue of certain handset models only being able to pair with certain hearing aids.

7. After the relevant 100% hearing aid compatibility transition period ends, any new handset model that handset manufacturers and service providers add to their handset model portfolios must meet applicable volume control requirements, as well as the other technical requirements of the 2019 ANSI Standard that is currently used for certification purposes.¹⁰ The volume control requirement may be met using the volume control waiver standard adopted by the Wireless Telecommunications Bureau (WTB) in September 2023 (“*HAC Waiver Order*”), as long as it remains in effect.¹¹ This decision to impose a 100% volume control benchmark on handset models added to handset model portfolios after the applicable 100% hearing aid compatibility transition period ends allows handset manufacturers and service providers to continue to offer handset models certified under the 2011 ANSI Standard or older standards. Handset manufacturers and service providers will be able to count as hearing aid-compatible those handset models certified under the 2011 ANSI Standard or older standards for handset model deployment purposes as long as those handset models were being offered for sale or use in the United States prior to the expiration of the relevant 100% hearing aid compatibility transition period. Rather than requiring handset models certified under the 2011 ANSI Standard or older standards to be removed from handset model portfolios, these handset models will be gradually replaced with new handset models that meet 2019 ANSI Standard requirements, including volume control requirements, through the typical handset model product cycle. This approach will ensure that older hearing aid compatible handset models, which tend to be lower priced, continue to be available for consumers to consider for purchase during the remaining product cycle.

8. In addition to the above handset model requirements, we adopt other updates and revisions to our wireless hearing aid compatibility rules that are consistent with our decision to adopt a 100% hearing aid compatibility requirement and the related handset model deployment benchmarks and transition periods. These changes include:

- After the expiration of the handset manufacturer 100% hearing aid compatibility transition period, handset manufacturers must ensure that all new handset models by default come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on. We will allow, however, secondary settings to turn on the handset model’s telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model.
- We revise our handset model external printed package label requirements and our related requirements concerning information that must be included within the handset model’s

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is a Bluetooth profile that enables a handset model to connect directly to one or two hearing aids using Bluetooth LE Audio. While Bluetooth HAP allows hearing aids to function like regular Bluetooth earbuds, it also includes several features specific to hearing aids. For example, it allows separate volume controls for ambient sound, telecoil audio, and audio streams from a handset or broadcast source. Phone Scoop, *HAP*, <https://www.phonescoop.com/glossary/term.php?gid=649>.

¹⁰ Volume control is measured by the ability to achieve a specific nominal acoustic output level with a specified input along with the ability to achieve a specified amount of acoustic gain above that nominal level. The nominal acoustic output is the same level experienced during a typical face-to-face conversation when speakers are about 1 meter apart, with gain that permits increasing the level if needed. HAC Task Force Final Report at 5 & n.16; *see also 100% HAC Notice* at 5, para. 9 & n.25.

¹¹ *Amendment of the Commission’s Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Order, DA 23-914 (WTB Sept. 29, 2023) (*HAC Waiver Order*). The waiver standard became effective upon the release date of the *HAC Waiver Order* and will continue in effect for 24 months after the release date of the *HAC Waiver Order*. *Id.* at 2, 13, 14, paras 4, 36, 42.

packaging in the form of either a printed insert or a printed handset manual. We update these requirements to reflect our new coupling standards to ensure that consumers are fully informed about the pairing capabilities of handset models they are considering for purchase.

- We continue to require the use of external printed package labels, but will allow the information that must be included within a handset model's packaging, either in the form of a printed insert or a printed handset manual, to be delivered using digital labeling technology¹² as long as companies choosing this option maintain publicly accessible websites¹³ where consumers can easily locate the required information and the information is presented in a straight-forward fashion using plain language. Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-Response (QR) code and the related website address where the required information can be found.
- We determine that in cases where a handset manufacturer or service provider recertifies a handset model using an updated certification standard, the company does not need to assign the handset model a new model number designation, unless the handset model's hardware or software has been physically altered in form, features, or capabilities in order to meet the requirements of the new certification standard.
- As part of our implementation of a 100% hearing aid compatibility requirement, we revise our website posting and record retention requirements to ensure that handset manufacturers and service providers comply with our new standard and to ensure that consumers have access to the information that they need to make informed purchasing decisions.
- After the handset manufacturer's 100% hearing aid compatibility transition period ends, we will eliminate FCC Form 655 that handset manufacturers currently file for reporting purposes and instead require handset manufacturers to annually file FCC Form 855 for compliance purposes. Beginning at the time handset manufacturers start filing FCC Form 855, we will align their compliance filing deadline and reporting period for this form with those used for service providers who will continue to annually file this form, as updated to reflect our new hearing aid compatibility requirements.
- We decline to adopt the HAC Task Force's recommendation that we permit service providers to rely on the information linked to in the Commission's Accessibility Clearinghouse as a legal safe harbor for purposes of meeting handset model deployment benchmarks. We further decline to adopt the HAC Task Force's recommendation that we establish a 90-day shot clock for resolving hearing aid compatibility waiver requests.
- We require handset manufacturers and service providers to post on their publicly accessible websites point-of-contact information that consumers can use to contact

¹² Digital labeling technology refers to Quick-Response (QR) codes and related website addresses that link to additional online information about a handset model's hearing aid compatibility. *See* Appendix B, Final Rules, section 20.19(a).

¹³ A publicly accessible website refers to a consumer facing website that handset manufacturers and service providers maintain and that consumers can locate through a website search. *See* Appendix B, Final Rules, section 20.19(a); *see also* 2008 HAC Order, 23 FCC Rcd at 3446, 3448, 3450, paras. 100, 109, 112 (establishing website posting requirements for handset manufacturers and service providers that maintain public websites); 2018 HAC Order, 33 FCC Rcd at 11554 & n.36, 11555, 11557, paras. 12 & n.36, 17, 22 (adopting revised website posting requirements for consumer facing websites).

knowledgeable company employees with hearing aid compatibility questions about the company's handset models.

- We eliminate the *de minimis* exception in our hearing aid compatibility rules for handset manufacturers and service providers using a three-step process that is consistent with the 100% hearing aid compatibility transition periods.
- We revise the heading of section 20.19 of our rules from "Hearing aid-compatible mobile handsets" to "Hearing loss compatible wireless handsets" or "HLC" for short in order to ensure that the heading more accurately reflects the scope of the section.
- Finally, we determine that our decision to adopt a 100% hearing aid compatibility requirement is consistent with and furthers our goal to advance digital equity and inclusion for all.

III. BACKGROUND

9. Over time, the Commission has progressively increased the deployment benchmarks for hearing aid-compatible wireless handset models.¹⁴ In 2016, the Commission reconfirmed its commitment to pursuing 100% hearing aid compatibility to the extent achievable.¹⁵ The *2016 HAC Order* supported this objective by increasing the number of hearing aid-compatible handset models that handset manufacturers and service providers were required to offer by adopting two new handset model deployment benchmarks and related transition periods. In October 2018, the handset model deployment benchmark for handset manufacturers increased to 66%, and in October 2021 it increased to 85%.¹⁶ Similarly, in April 2019 the handset model deployment benchmark for nationwide service providers increased to 66%, and in April 2022 it increased to 85%.¹⁷ Likewise, in April 2020 the handset model deployment benchmark for non-nationwide service providers increased to 66%, and in April 2023 it increased to 85%.¹⁸ Currently, the generally applicable handset model deployment benchmark is 85% for handset manufacturers and service providers, unless they qualify for *de minimis* status.¹⁹

10. In that same order, the Commission established a process for determining whether a 100% hearing aid compatibility requirement is "achievable." The Commission stated that it wanted to continue the "productive collaboration between stakeholders and other interested parties" that had been part of the process for enacting the two new handset model deployment benchmarks.²⁰ The Commission noted the stakeholders' proposal to form a task force independent of the Commission to "issue a report to the Commission helping to inform" the agency "on whether 100 percent hearing aid compatibility is achievable."²¹ Part of this process included determining whether the hearing aid compatibility

¹⁴ See *2016 HAC Order*, 31 FCC Rcd at 9336, 9337-38 & n.3, paras. 1, 5-6 & n.3; see also *2003 HAC Order*, 18 FCC Rcd at 16754-55, paras. 3-4.

¹⁵ *2016 HAC Order*, 31 FCC Rcd at 9337, para. 3; see also *2003 HAC Order*, 18 FCC Rcd at 16754, para. 2; *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11174, para. 18 (2010) (*2010 HAC Order*); *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Report and Order, 36 FCC Rcd 4566, 4577-78, paras. 1, 27-28 (2021) (*2021 HAC Order*).

¹⁶ 47 CFR § 20.19(c)(1).

¹⁷ *Id.* § 20.19(c)(2).

¹⁸ *Id.* § 20.19(c)(3).

¹⁹ *Id.* § 20.19(e).

²⁰ *2016 HAC Order*, 31 FCC Rcd at 9336, 9343, paras. 1, 20.

²¹ *Id.*

requirements should be modified to include alternative technologies such as Bluetooth.²² The Commission stated that it was deferring action on compliance processes, legacy models, burden reduction, the appropriate transition periods, and other implementation issues until after it received the HAC Task Force's Final Report on achievability.²³ The Commission added that it intended to decide by 2024 whether to require 100% of covered wireless handset models to be hearing aid compatible.²⁴ The Commission indicated that it would make its determination as to whether this goal is achievable by relying on the factors identified in section 710(e) of the Communications Act.²⁵ After the *2016 HAC Order* was released, stakeholders convened the independent HAC Task Force and filed progress updates with the Commission.²⁶

11. In 2018, the Commission imposed new website posting requirements and took steps to reduce regulatory burden on service providers by allowing them to file a streamlined annual certification under penalty of perjury stating their compliance with the Commission's hearing aid compatibility requirements.²⁷ As part of the *2018 HAC Order*, the Commission noted that, in the 100% hearing aid compatibility docket, it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it adopted a 100% hearing aid compatibility requirement.²⁸ The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the *2018 HAC Order* would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not "prejudge any further steps we may take to modify our reporting rules in that proceeding."²⁹

12. In February 2021, the Commission adopted the 2019 ANSI Standard for determining hearing aid compatibility.³⁰ The 2019 ANSI Standard was to replace the existing 2011 ANSI Standard³¹ after a 24-month transition period that was set to end on June 5, 2023.³² Like the 2011 ANSI Standard, the 2019 ANSI Standard addresses acoustic and inductive coupling between wireless handset models and hearing aids but uses heightened testing methodologies intended to ensure handset models offer a better listening experience for consumers.³³ In addition, the 2019 ANSI Standard includes for the first time a

²² *Id.* at 9337, para. 4.

²³ *Id.* at 9353-54, para. 43.

²⁴ *Id.* at 9337, 9349, paras. 4, 34.

²⁵ *Id.* at 9354-55, paras. 44-45.

²⁶ HAC Task Force Final Report at 11-12.

²⁷ *2018 HAC Order*, 33 FCC Rcd at 11554, paras. 12-14.

²⁸ *Id.* at 11554, para. 15.

²⁹ *Id.*

³⁰ *2021 HAC Order*, 36 FCC Rcd at 4576, para. 9; *see also* Accredited Standards Committee C63®—Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2019 (approved Aug. 19, 2019) (2019 ANSI Standard).

³¹ *See* Accredited Standards Committee C63®—Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2011 (approved May 27, 2011) (2011 ANSI Standard).

³² *2021 HAC Order*, 36 FCC Rcd at 4570, 4576, paras. 9, 22.

³³ Hearing aids operating in acoustic coupling mode receive sounds through a microphone and then amplify all sounds surrounding the user, including both desired sounds, such as a handset's audio signal, and unwanted ambient noise. To use a mobile handset model with a hearing aid or cochlear implant in acoustic coupling mode, radiofrequency interference (RF) and other electromagnetic interference from the handset must be controlled. Hearing aids operating in inductive coupling mode turn off their microphone to avoid amplifying unwanted ambient noise, instead using a telecoil (T-Coil) to receive only audio signal-based magnetic fields generated by inductive

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volume control requirement. The standard specifically incorporates by reference the TIA 5050 Standard that addresses volume control requirements for wireless handset models.³⁴ As part of the order adopting the 2019 ANSI Standard and the related TIA 5050 Standard, the Commission reiterated its goal “to continue on the path to making 100% of wireless handsets hearing aid compatible.”³⁵

13. In December 2022, the HAC Task Force filed with the Commission its Final Report, which makes five central recommendations.³⁶ The report recommends that the Commission: (1) adopt a more flexible, forward-looking definition of hearing aid compatibility; (2) adjust current technical standards; (3) allow for exploration of changes in coupling technology (e.g., by additional exploration of Bluetooth and alternative technologies); (4) allow reliance on information linked in the Commission’s Accessibility Clearinghouse; and (5) set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements.³⁷

14. The Final Report also recommends that the Commission grant the volume control waiver request that the Alliance for Telecommunications Industry Solutions (ATIS) filed the same day that the HAC Task Force filed its Final Report.³⁸ In its waiver request, ATIS asserted that the testing performed by the HAC Task Force revealed that the TIA 5050 Standard for volume control was fundamentally flawed because it required the use of a pulsed-noise signal, which ATIS claimed was insufficiently voice-like to be compatible with many modern codecs.³⁹ ATIS also stated that the standard’s use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard.⁴⁰ As a result, ATIS requested that the Commission allow handsets to be certified as hearing aid-compatible using a modified volume control testing methodology.⁴¹

15. On March 23, 2023, WTB released a Public Notice seeking comment on the HAC Task Force’s Final Report.⁴² The Public Notice sought comment generally on the report’s recommendations

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coupling-capable telephones. The hearing aid converts these fields back to sound or to a signal appropriate for cochlear implant users. For ease of reference, we refer to the 2019 ANSI Standard’s RF interference potential requirements as acoustic coupling requirements and the standard’s T-Coil compatibility requirements as telecoil coupling requirements. See Appendix B, Final Rules, section 20.19(a).

³⁴ 2019 ANSI Standard at § 7; *2021 HAC Order*, 36 FCC Rcd at 4571, para. 10; ANSI/TIA-5050-2018, Telecommunications—Communications Products—Receive Volume Control Requirements for Wireless (Mobile) Devices (approved January 17, 2018) (TIA 5050 Standard). The TIA 5050 Standard establishes a volume control testing methodology, which defines conversational gain as the acoustic output level of speech from a handset relative to the acoustic level that would be present in a face-to-face conversation with two people one meter apart. TIA 5050 Standard at § 1.

³⁵ *2021 HAC Order*, 36 FCC Rcd at 4566, para. 1; see also *id.* at 4578, para. 28.

³⁶ HAC Task Force Final Report; see also *2016 HAC Order*, 31 FCC Rcd at 9337, para. 3.

³⁷ HAC Task Force Final Report at ii.

³⁸ *Id.*; Petition of ATIS on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force for Limited, Interim Waiver, WT Docket Nos. 15-285 and 20-3 (filed Dec. 16, 2022) (ATIS Waiver Petition). ATIS filed its waiver petition on behalf of all manufacturers and service providers subject to sections 20.19(b)(1) and (b)(3) of the Commission’s wireless hearing aid compatibility rules. *Id.* at 1, 4.

³⁹ ATIS Waiver Petition at 3-4.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 4, 12-13.

⁴² *Wireless Telecommunications Bureau Requests Comment on the Hearing Aid Compatibility Task Force’s Final Report and Recommendation*, Docket No. 15-285, Public Notice, 38 FCC Rcd 2280 (WTB Mar. 23, 2023) (*HAC Public Notice*).

and whether they furthered the Commission's goal of attaining 100% hearing aid compatibility.⁴³ The Public Notice also asked whether the report's recommendations were consistent with the policy goals the Commission has historically outlined in its hearing aid compatibility-related proceedings and with the Commission's statutory duties under section 710 of the Communications Act.⁴⁴ The Commission received three comments and three replies in response to the Public Notice.⁴⁵

16. On April 14, 2023, WTB released an order extending the transition period for exclusive use of the 2019 ANSI Standard from June 5, 2023 to December 5, 2023.⁴⁶ WTB took this step to ensure that handset manufacturers could continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considered ATIS's waiver petition.⁴⁷ WTB stated that continuing to allow new handset models to be certified as hearing aid-compatible was essential as the Commission moves to its goal of all handset models being hearing aid compatible.⁴⁸

17. On September 29, 2023, WTB conditionally granted in part ATIS's request for a limited waiver of the 2019 ANSI Standard's volume control testing requirements.⁴⁹ Under the terms of the waiver, a handset model may be certified as hearing aid-compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in the *HAC Waiver Order* as well as all other aspects of the 2019 ANSI Standard.⁵⁰ This waiver will remain in place for 24 months from the release date of the Order to allow time for the development of a new, full volume control standard and for its incorporation into the wireless hearing aid compatibility rules.⁵¹

18. Subsequently, on December 14, 2023, the Commission released a Notice of Proposed Rulemaking (*100% HAC Notice*) seeking to develop a record with respect to the HAC Task Force's proposal on how the Commission can achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States.⁵² The *100% HAC Notice* proposed to adopt the HAC Task Force's proposal with certain modifications in order to ensure that all handset models provide full accessibility for those with hearing loss while at the same time ensuring that our rules not discourage or impair the development of improved technology.⁵³ Specifically, the *100%*

⁴³ *Id.* at 2282, para. 6.

⁴⁴ *Id.*

⁴⁵ Comments and replies were filed in WT Docket No. 15-285 and were due by April 24, 2023 and May 8, 2023, respectively. *HAC Public Notice*, 38 FCC Rcd at 2285, para. 19. Comments were filed by the Bluetooth Special Interest Group, Inc. (Bluetooth SIG), Consumer Technology Association (CTA), and Samsung Electronics America (Samsung). Reply comments were filed by the HAC Task Force, Ms. Janice S. Lintz (Lintz), and Mobile & Wireless Forum (MWF).

⁴⁶ *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Order, 38 FCC Rcd 3400, para. 1 (WTB Apr. 14, 2023) (*HAC Extension Order*).

⁴⁷ *Id.*

⁴⁸ *Id.* at 3401, para. 2.

⁴⁹ See *supra* note 11; see also *Wireless Telecommunications Bureau Seeks Comment on ATIS Waiver Request on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force*, WT Docket No. 20-3, Public Notice, 38 FCC Rcd 2273 (WTB Mar. 23, 2023).

⁵⁰ *HAC Waiver Order* at 1, para. 1.

⁵¹ *Id.* at 2, 13, 14, paras. 4, 36, 42.

⁵² See *supra* note 6.

⁵³ *100% HAC Notice* at 2-3, paras 2-4; see also 47 U.S.C. § 610(e); 2003 *HAC Order*, 18 FCC Rcd at 16765, para. 28 ("In the legislative history of the HAC Act, Congress stated that the Act does not tie manufacturers to a particular technology and inhibit future development; instead, it sought only to require that telephones be compatible.") (citation omitted).

HAC Notice tentatively concluded that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act.⁵⁴ As part of this determination, the *100% HAC Notice* sought comment on adopting the more flexible “forward-looking” definition of hearing aid compatibility that the HAC Task Force recommends, and proposed to broaden the current definition of hearing aid compatibility to include Bluetooth coupling technology, and to require at least 15% of offered handset models to pair with hearing aids through Bluetooth coupling technology.⁵⁵ The *100% HAC Notice* sought comment on the Bluetooth coupling technology that the Commission should adopt to meet this requirement and how it should incorporate this requirement into the Commission’s hearing aid compatibility rules.⁵⁶

19. Further, the *100% HAC Notice* explored ways to reach the 100% hearing aid compatibility benchmark and proposed a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States.⁵⁷ In addition, the *100% HAC Notice* sought comment on certain implementation proposals and updates to the hearing aid compatibility rules related to the proposed 100% hearing aid compatibility requirement. These proposals included requirements for hearing aid compatibility settings in handset models, revised website posting, labeling and disclosure rules, and revised reporting requirements along with seeking comment on revising the heading of section 20.19 of the Commission’s rules to better reflect the scope of its requirements.⁵⁸

IV. DISCUSSION

A. Establishing a 100% Hearing Aid Compatibility Requirement

20. We find that establishing a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States meets the requirements of section 710(e) of the Communications Act.⁵⁹ In the *100% HAC Notice*, we stated that we would use a section 710(e) analysis to evaluate whether a 100% hearing aid compatibility requirement is achievable, and we tentatively concluded that requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable objective.⁶⁰ In reaching this tentative conclusion, we noted that the Commission had previously decided that it would make a determination of whether a 100% hearing aid compatibility requirement is achievable utilizing a section 710(e) analysis.⁶¹

⁵⁴ *100% HAC Notice* at 3, 7, paras. 3, 15, 17; *see also* 47 U.S.C. § 610(e).

⁵⁵ *100% HAC Notice* at 9, para. 23.

⁵⁶ *Id.* at 14, paras. 41-42.

⁵⁷ *Id.* at 27, para. 89.

⁵⁸ Comments on the *100% HAC Notice* were due on or before February 26, 2024, and reply comments were due on or before March 11, 2024. Federal Communications Commission, Achieving 100% Wireless Handset Model Hearing Aid Compatibility, 89 Fed. Reg. 5152 (Jan. 26, 2024). *See* Appendix A, Parties Filing Comments (listing commenters and reply commenters).

⁵⁹ 47 U.S.C. § 610(e). The Hearing Aid Compatibility Act was enacted in 1988 and codified as amended at 47 U.S.C. § 610. Pub. L. No. 100-394, § 3, 102 Stat. 976, 976 (1988). Congress amended section 610 in 2010 with the passage of the Twenty-First Century Communications and Video Accessibility Act (CVAA). Pub. L. 111-260, § 102, 124 Stat. 2751, 2753. The CVAA revised section 610(e) by adding at the end of the section: “In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.” 47 U.S.C. § 610(e).

⁶⁰ *100% HAC Notice* at 7, paras. 16-17.

⁶¹ *Id.*; *see also* 2016 *HAC Order*, 31 FCC Rcd at 9354-55, paras. 44-45.

21. We find that section 710(e) provides the appropriate standard for evaluating whether 100% hearing aid compatibility is an achievable objective. The Commission has used a section 710(e) analysis when considering whether to adjust handset model deployment benchmarks.⁶² Continuing to use this standard to determine whether to adopt a 100% hearing aid compatibility requirement is consistent with Commission precedent,⁶³ and the record supports our decision.⁶⁴ Commenters agree that adopting a 100% hearing aid compatibility requirement is consistent with the requirements of section 710(e) and that adopting a 100% hearing aid compatibility requirement will benefit consumers with hearing loss.⁶⁵ Further, commenters state that adopting a 100% hearing aid compatibility requirement will encourage the use of currently available technology and will not discourage or impair the development of improved technology.⁶⁶

22. Section 710(e) requires the Commission, in establishing regulations to help ensure access to telecommunications services by those with hearing loss, to “consider costs and benefits to all telephone users, including persons with and without hearing loss,” and to “ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.”⁶⁷ Section 710(e) further directs the Commission to use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users.⁶⁸

23. We find that the benefits of adopting a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States will exceed the costs. As the record reflects, a 100% hearing aid compatibility requirement will provide significant benefits to those with hearing loss by ensuring that all handset models offered for sale or use in the United States are hearing aid-compatible rather than only a certain percentage of these handset models. Under our action today, consumers with hearing loss will be able to consider any handset model for purchase rather than just a limited number of handset models. We agree with Accessibility Advocates that, given that two-thirds of all households are wireless only and that most people, including those with hearing loss, rely solely on wireless handsets for their telecommunication needs, a 100% hearing aid compatibility requirement has become essential.⁶⁹ Further, we do not anticipate any costs for those with or without hearing loss if non-compliant handset models are discontinued, considering the overwhelming share of wireless handset models already meet acoustic and telecoil standards and most include some form of Bluetooth coupling technology. In addition, given our decision below to allow the grandfathering of existing hearing aid-compatible handset models, we do not find that our 100% compliance standard will reduce the affordability of lowest-cost handset models or adversely affect low-income persons.

24. With respect to the costs and benefits for handset manufacturers and service providers, Accessibility Advocates and CTIA state that the benefits of a 100% hearing aid compatibility requirement

⁶² 2016 HAC Order, 31 FCC Rcd at 9354-55, paras. 44-45; *see also* 2008 HAC Order, 23 FCC Rcd at 3408, para. 5.

⁶³ *See, e.g.,* 2008 HAC Order, 23 FCC Rcd at 3408, para. 5 & n.6; 2016 HAC Order, 31 FCC Rcd at 9354, para. 45.

⁶⁴ CTIA Comments at 4-6; HAC Task Force Comments at 3, 6.

⁶⁵ Accessibility Advocates Comments at 4; CTA Comments at 3; CTIA Comments at 1, 4-6; HAC Task Force Comments at 3; Samsung Comments at 5; Bluetooth SIG Reply at 1, 3; CCA Reply at 1, 8; CTIA Reply at 1; MWF Reply at 2, 7.

⁶⁶ Accessibility Advocates Comments at 4; CTA Comments at 3; CTIA Comments at 1, 4-6; HAC Task Force Comments at 3; Samsung Comments at 5; Bluetooth SIG Reply at 1, 3; CCA Reply at 1, 8; CTIA Reply at 1; MWF Reply at 2, 7.

⁶⁷ 47 U.S.C. § 610(e).

⁶⁸ *Id.*

⁶⁹ Accessibility Advocates Comments at 4.

will exceed its costs for these type of companies.⁷⁰ We find that the costs to handset manufacturers and service providers should be minimally different than they are now. The vast majority of new handset models are already hearing aid-compatible and, in fact, the great majority of handset manufacturers and service providers are already at the 100% standard.⁷¹ The HAC Task Force states that as of August 2022, about 93% of wireless handset models offered by manufacturers were already certified as hearing aid-compatible under the 2011 ANSI Standard or an older ANSI standard, which exceeds the benchmarks in the Commission's current rules.⁷²

25. In addition, as required by section 710(e), we find that a 100% compliance standard will encourage the use of currently available technology and will not discourage or impair the development of improved technology. The HAC Task Force, Accessibility Advocates, and CTIA agree with this conclusion.⁷³ Handset manufacturers, service providers, and consumer organizations that compose the HAC Task Force all unanimously support its consensus proposal for achieving 100% compliance.⁷⁴ The HAC Task Force's Final Report and the record in this proceeding provides no indication or evidence that adopting this new standard will discourage the use of currently available coupling technologies, such as acoustic and telecoil coupling, or the development of improved coupling technologies.⁷⁵ Further, as discussed below and consistent with the HAC Task Force's recommendation, we are adopting a new Bluetooth coupling requirement that commenters indicate will encourage the use of currently available Bluetooth coupling technology and the development of new and advanced Bluetooth coupling technology.⁷⁶

26. Further, we conclude that adopting a 100% hearing aid compatibility compliance standard in conjunction with the transition periods and handset model deployment benchmarks that we adopt below is consistent with the requirements of section 710(e). The transition periods that we adopt below will allow sufficient time to expand access to hearing aid-compatible handset models while giving handset manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than into just a certain percentage of future handset models. Handset manufacturers are familiar with the 2019 ANSI Standard, which is the exclusive testing standard for determining capability. Handset manufacturers are already using this standard to certify new handset models as hearing aid compatible.⁷⁷ Similarly, the new Bluetooth coupling requirement allows

⁷⁰ Accessibility Advocates Comments at 4; CTIA Comments at 6.

⁷¹ See FCC, Filing Hearing Aid Compatibility Reports and Certifications, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Sept. 26, 2024) (setting forth the latest handset manufacturer and service provider compliance reports and certifications).

⁷² HAC Task Force Final Report at 7. We note that the HAC Task Force's 93% compliance figure is based on handset manufacturer compliance filings covering the reporting period of July 1, 2021 to June 30, 2022, which is before volume control testing requirements or use of the 2019 ANSI Standard became mandatory.

⁷³ Accessibility Advocates Comments at 4-5; CTIA Comments at 6; HAC Task Force Comments at 6.

⁷⁴ HAC Task Force Final Report at i-ii, 18-20.

⁷⁵ *Id.* at 15 (stating that "[t]he vast majority of wireless handsets now include at least some type of Bluetooth audio technology, without a regulatory mandate, and the HAC Task Force anticipates that operating system designers and manufacturers of handsets, headsets, earbuds, hearing aids, cochlear implants, personal sound amplification products, and other information and communications technology will incorporate the Bluetooth HAP going forward, providing a purpose-built, familiar, and effective means of using one's handset with hearing aids designed to be compatible with telephones.").

⁷⁶ Accessibility Advocates Comments at 11; CTIA Comments at 8; MWF Comments at 2; Samsung Comments at 8-9; TIA Comments at 4; Bluetooth SIG Reply at 2; CTA Reply at 7; CTIA Reply at 2.

⁷⁷ See Spectrum, *Spectrum Mobile Hearing Aid Compatibility* (Apr. 23, 2024) <https://www.spectrum.net/en/support/mobile/spectrum-mobile-hearing-aid-compatibility> (listing handset models certified under the 2019 ANSI Standard); Verizon, Accessibility Home/Hearing, Deaf and Hard of Hearing,

(continued....)

handset manufacturers to continue to use Bluetooth coupling technology that they already include in their current handset models. As a result, the 100% hearing aid compatibility transition periods that we adopt below take into consideration technical feasibility and will ensure a smooth transition to a 100% hearing aid compatibility requirement.

27. Finally, the handset model deployment benchmarks we adopt below take into consideration that, while many consumers prefer Bluetooth over telecoil coupling, there are still those who prefer telecoil coupling. Our handset model deployment benchmarks ensure the marketability of new handset models by adopting the HAC Task Force's recommendation on the appropriate split between future handset models that should be required to include Bluetooth coupling technology and those that should be required to include telecoils. In addition, the Bluetooth coupling functionality requirements that we adopt below will encourage the development of advanced Bluetooth coupling technologies that will further benefit consumers with hearing loss. As a result, we find that our 100% hearing aid compatibility requirement properly considers technical feasibility and ensures the marketability and availability of new hearing aid compatibility technology.

B. Expanding the Definition of Hearing Aid Compatibility

28. We adopt the HAC Task Force's expanded definition of hearing aid compatibility, which defines a hearing aid-compatible handset model as: (1) having an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable. Further, we adopt the HAC Task Force's recommendations on how we should define each of these terms. This expanded definition of hearing aid compatibility allows us to continue to use ANSI certification standards that we incorporate by reference into our hearing aid compatibility rules to objectively measure acoustic, telecoil, and volume control compatibility. Further, this revised definition allows us to adopt a coupling requirement that is based on Bluetooth coupling technologies that meet certain functional requirements that we expressly incorporate into the Commission's hearing aid compatibility rules without also expressly incorporating a specific Bluetooth coupling technology, such as Bluetooth LE Audio and the related Bluetooth HAP standards.

29. In the *100% HAC Notice*, we observed that our existing hearing aid compatibility rules do not contain an express definition of hearing aid compatibility in the definition section of the rules.⁷⁸ Rather, we stated that our hearing aid compatibility rules provide that a handset model is considered to be hearing aid-compatible if it has been certified as such under a Commission-approved technical standard that the Commission has expressly incorporated by reference into the hearing aid compatibility rules through notice and comment rulemaking procedures.⁷⁹ In the *100% HAC Notice*, we sought comment on defining hearing aid compatibility in a more flexible manner than whether a handset model merely meets the criteria of a technical certification standard that the Commission has incorporated by reference into the rules.⁸⁰ Specifically, we sought comment on whether we should adopt what the HAC Task Force calls a more forward-looking, flexible definition of hearing aid compatibility that reflects changing coupling technologies.⁸¹ This definition would define a hearing aid-compatible handset model as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable.⁸²

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<https://www.verizon.com/about/accessibility/hearing#samsung> (last visited July 3, 2024) (listing handset models certified under the 2019 ANSI Standard).

⁷⁸ *100% HAC Notice* at 9, para. 24.

⁷⁹ *Id.*

⁸⁰ *Id.* at 9, para. 25.

⁸¹ *Id.*

⁸² *Id.*

30. Commenters urge us to adopt the HAC Task Force’s flexible and forward-looking revised definition of hearing aid compatibility.⁸³ In its comments, the HAC Task Force asserts that this revised definition of hearing aid compatibility benefits consumers with hearing loss and meets the needs of handset manufacturers and service providers.⁸⁴ We find that this revised definition of hearing aid compatibility allows the Commission’s rules to keep pace with evolving coupling technologies and to ensure that consumers with hearing loss have access to the latest handset models with the most current coupling technology. Further, we find this revised definition is consistent with our 100% hearing aid compatibility requirement because it allows for a wider range of coupling technologies. As discussed below, it permits us to mandate a Bluetooth coupling requirement without specifying a specific Bluetooth coupling technology and gives us the ability to expand our coupling requirements in the future without having to incorporate a specific coupling standard into the hearing aid compatibility rules, as the Commission presently does with respect to acoustic, telecoil, and volume control certification requirements.

31. We also adopt the HAC Task Force’s recommendations for defining each of the terms that comprise the three parts of our new definition of hearing aid compatibility. Commenters support this approach, asserting that the revised definition should be broadly construed to ensure increased innovation that meets the needs of consumers with hearing loss.⁸⁵ Competitive Carriers Association (CCA) states that in order to ensure the strongest compatibility framework, the definition must allow for the express incorporation of alternative and innovative coupling technologies.⁸⁶

32. *Part 1: “Having an Internal Means of Compatibility.”* We adopt the HAC Task Force’s recommendation that we define “having an internal means for compatibility” to mean that the compatibility must be provided as an integral part of the handset model rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by the same manufacturer.⁸⁷ This definition is consistent with section 710(b)(1) of the Communications Act which requires the Commission to ensure that handset models have an internal means for effective use with hearing aids.⁸⁸ Further, this definition is consistent with the Commission’s past interpretation of this statutory language. In the *2003 HAC Order*, the Commission interpreted this statutory language to mean that the capability must be provided as an integral part of the handset model, rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by manufacturers.⁸⁹ Further, the Commission stated that many consumers find the use of accessory devices such as neck loops or hands-free headsets to be unduly restrictive because they are cumbersome, inconvenient, and expensive.⁹⁰

⁸³ Accessibility Advocates Comments at 6; CTIA Comments at 7; HAC Task Force Comments at 4; MWF Comments at 3; Bluetooth SIG Reply at 2; CCA Reply at 2-3; CTIA Reply at 4-5.

⁸⁴ HAC Task Force Comments at 4.

⁸⁵ Accessibility Advocates Comments at 6; CTIA Comments at 7; HAC Task Force Comments at 4; MWF Comments at 3; Bluetooth SIG Reply at 2; CCA Reply at 2-3; CTIA Reply at 4-5.

⁸⁶ CCA Reply at 2-3.

⁸⁷ HAC Task Force Final Report at 16.

⁸⁸ 47 U.S.C. § 610(b)(1) (This section requires handsets to “provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.”).

⁸⁹ *2003 HAC Order*, 18 FCC Rcd at 16778, para. 61.

⁹⁰ *Id.* at 16765, 16778, paras. 28, 60.

33. Accessibility Advocates and the Mobile & Wireless Forum (MWF) recognize that this definition of internal compatibility is consistent with our current requirements concerning acoustic and telecoil connectivity, as well as volume control functionality, because these forms of hearing aid compatibility are built into handset models.⁹¹ Further, Accessibility Advocates state that relying on external compatibility solutions does not give consumers with hearing loss equal access to the functionality of handset models that internal solutions provide.⁹² Accessibility Advocates also state that external wireless solutions have never been construed as providing “equal access” and should not be now.⁹³ We agree. As required by section 710(b)(1), we will continue to require that hearing aid capability features in handset models provide an internal means for effective use with hearing aids.

34. *Part 2: “Meets Established Technical Standards for Hearing Aid Coupling or Compatibility.”* We also adopt the HAC Task Force’s recommendation for how we should define the term “meets established technical standards for hearing aid coupling or compatibility.” Like the first part of our expanded definition of hearing aid compatibility, this part of our revised definition also incorporates the requirements of section 710(b)(1) of the Communications Act. This section requires the Commission to ensure that handsets must meet established technical standards for effective use of handset models with hearing aids.⁹⁴ The Commission interprets this directive to require that handset models work with hearing aids through built-in functionality that is testable to a technical standard to ensure that the compatibility can be objectively measured.⁹⁵ The Commission’s current rules utilize ANSI standards to satisfy this requirement, which the Commission has incorporated by reference into the hearing aid compatibility rules.⁹⁶ ANSI standards provide measurement methodologies and performance criteria testing requirements that are used to objectively measure acoustic and telecoil connectivity and volume control functionality.

35. The HAC Task Force acknowledges that the reference to established technical standards in our expanded definition of hearing aid compatibility allows the Commission to continue to rely on ANSI standards as currently provided in section 20.19(b) of the Commission’s rules.⁹⁷ The Commission has recognized, however, that section 710(e) of the Communications Act requires that the Commission’s regulations not discourage or impair the development of improved technology.⁹⁸ It is with this statutory directive in mind that we expand our definition of hearing aid compatibility to allow for the use of technical standards that require the effective use of handset models with hearing aids that the Commission does not specifically incorporate by reference into the hearing aid compatibility rules. In these circumstances, the Commission will ensure effective use by adopting functionality requirements that include performance requirements. We agree with the HAC Task Force that these types of technical standards should ensure that the hearing aid compatibility technology is interoperable, non-proprietary, and adopted by industry and consumers alike.⁹⁹ Consistent with the HAC Task Force’s recommendation, we will consider factors such as ease-of-use, reliability, industry adoption, and consumer use and

⁹¹ Accessibility Advocates Comments at 7; MWF Comments at 3-4.

⁹² Accessibility Advocates Comments at 7.

⁹³ *Id.*

⁹⁴ 47 U.S.C. § 610(b)(1)(C).

⁹⁵ 2003 HAC Order, 18 FCC Rcd at 16765, 16776, 16779, paras. 28, 55, 63.

⁹⁶ 47 CFR § 20.19(b), (l).

⁹⁷ HAC Task Force Final Report at 16-17.

⁹⁸ 47 U.S.C. § 610(e).

⁹⁹ HAC Task Force Final Report at 16.

adoption when evaluating whether technical standards defined by functionality requirements provide for effective use of handset models with hearing aids.¹⁰⁰

36. *Part 3: “Is Usable.”* Finally, we adopt the HAC Task Force’s recommendation for how we should define the term “is usable.” We agree with the HAC Task Force that this term should mean that consumers with hearing loss must have adequate information on how to operate their handset models and access to the full functionality and documentation for their handset models, including instructions, product information (including accessible feature information), documentations, bills, and technical support which is provided to individuals without hearing loss.¹⁰¹ As Accessibility Advocates recognize, these requirements are consistent with sections 255 and 716 of the Communications Act.¹⁰² Section 255(b) provides that “[a] manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if ready achievable.”¹⁰³ Further, section 255(c) provides that “[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.”¹⁰⁴ In addition, section 716(a)(1) of the Communications Act provides that “a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall 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 the requirements . . . are not achievable.”¹⁰⁵ Usability is critically important to consumers with hearing loss, and we will consider usability to be a significant factor in deciding whether to expand our rules to allow for new coupling methodologies that we do not necessarily specifically incorporate into our rules.

C. Adopting a Bluetooth Coupling Requirement

37. We adopt a Bluetooth coupling requirement that is based on Bluetooth coupling technology that meets the requirements of our expanded definition of hearing aid compatibility that we adopted above and certain functional requirements that we adopt below. In the *100% HAC Notice*, we sought comment on the HAC Task Force recommendation that the Commission adopt a Bluetooth coupling requirement and that the Commission expand the definition of hearing aid compatibility to allow for this requirement.¹⁰⁶ We find that adopting a Bluetooth coupling requirement is consistent with section 710 of the Communications Act.¹⁰⁷ We therefore adopt a Bluetooth coupling requirement that is based on our expanded definition of hearing aid compatibility and on a functional definition of Bluetooth coupling technology.

38. Sections 710(a) and (c) of the Communications Act require the Commission to establish regulations “to ensure reasonable access to telephone service by persons with impaired hearing” and to “establish or approve such technical standards as are required” to do so.¹⁰⁸ Section 710(c) also provides that the Commission is the final arbiter as to whether standards meet technical standard requirements.¹⁰⁹

¹⁰⁰ *Id.* at ii, 17.

¹⁰¹ *Id.* at 17.

¹⁰² Accessibility Advocates Comments 10.

¹⁰³ 47 U.S.C. § 255(b).

¹⁰⁴ *Id.* § 255(c).

¹⁰⁵ *Id.* § 617(a)(1).

¹⁰⁶ *100% HAC Notice* at 14, paras. 41-42.

¹⁰⁷ 47 U.S.C. § 610.

¹⁰⁸ *Id.* § 610(a), (c).

¹⁰⁹ *Id.* § 610(c).

The Commission relies on this statutory authority when it incorporates by reference new ANSI standards into the hearing aid compatibility rules. When a new ANSI standard becomes available, the ANSI committee petitions the Commission to adopt the new standard.¹¹⁰ The Commission seeks comment on the petition and implementation issues related to the new standard. After considering the views of all interested parties, including members of the public with hearing loss, the Commission decides whether to incorporate the new standard into the hearing aid compatibility rules along with any related implementation provisions.¹¹¹ The Commission followed this process when it determined to incorporate by reference the 2019 ANSI Standard into the hearing aid compatibility rules.¹¹²

39. In the present case, the HAC Task Force recommends that the Commission adopt Bluetooth coupling methods such as Bluetooth Classic, Made-for-iPhone (MFi), and Audio Streaming for Hearing Aids (ASHA) into the hearing aid compatibility rules for a period of transition.¹¹³ The Commission has twice sought comment on this recommendation. First, WTB issued a Public Notice asking for comment on the HAC Task Force's Final Report, including its Bluetooth coupling recommendation.¹¹⁴ Based on these comments, we released the *100% HAC Notice* in which we proposed to expand the definition of hearing aid compatibility to include a Bluetooth coupling requirement. As required by sections 710(a) and (c) of the Communications Act, we sought comment on this proposal and on suggestions for how we should implement it.¹¹⁵ Commenters support this proposal to adopt a Bluetooth coupling requirement and provide comments on how we should implement the requirement.¹¹⁶ Based on this record, we adopt the HAC Task Force's Bluetooth coupling recommendation.

40. Bluetooth is an umbrella term for a group of related technical profiles that enable devices to communicate wirelessly with each other over a short distance.¹¹⁷ Bluetooth coupling has become a popular way to pair wireless handset models with hearing aids, as compared to acoustic and telecoil coupling methods.¹¹⁸ Bluetooth coupling technology is incorporated into handset models using internal chipsets and antennas.¹¹⁹ Unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio.¹²⁰ The vast majority of today's handset models include some type of Bluetooth coupling technology.¹²¹ Bluetooth transmission power is generally limited to 2.5 milliwatts,

¹¹⁰ See Report and Petition of American National Standards Institute Accredited Standards Committee C63®, CG Docket No. 13-46, WT Docket Nos. 07-250 and 10-254, at 1 (filed Sept. 23, 2019).

¹¹¹ 47 U.S.C. § 610(c).

¹¹² 2021 HAC Order, 36 FCC Rcd at 4566, para. 1.

¹¹³ HAC Task Force Final Report at 18-19. Bluetooth Classic is the original radio protocol prior to 2010 when the standard was updated with Bluetooth Low Energy. Bluetooth Classic is still widely used for streaming audio and voice. It has become the standard radio protocol used for wireless speakers, headphones, and in-car entertainment systems. Bluetooth, *Bluetooth Classic*, <https://www.bluetooth.com/learn-about-bluetooth/tech-overview/> (last visited Oct. 10, 2024); Argenox, *Bluetooth Classic*, <https://www.argenox.com/library/bluetooth-classic/introduction-to-bluetooth-classic/> (last visited Oct. 10, 2024).

¹¹⁴ HAC Public Notice, 38 FCC Rcd at 2284, para. 13.

¹¹⁵ 100% HAC Notice at 15, para. 46.

¹¹⁶ Accessibility Advocates Comments at 8-9; CTIA Comments at 8; MWF Comments 3-4, 8-9; Samsung Comments at 8-9; TIA Comments at 4; Bluetooth SIG Reply at 2; CTA Reply at 7; CTIA Reply at 2.

¹¹⁷ HAC Task Force Final Report at 13. The type of Bluetooth coupling technology that handset models and hearing aids include depends on when they were launched, battery size, software, costs, and other factors. *Id.* at 14 n.37.

¹¹⁸ HAC Task Force Final Report at 13.

¹¹⁹ *Id.* at 13-14; Samsung Comments at 11 & n.31.

¹²⁰ HAC Task Force Final Report at 15.

¹²¹ Bluetooth SIG Reply at 1.

which gives it a limited range of approximately 33 feet.¹²² It uses Ultra High Frequency (UHF) radio waves in the Industrial, Scientific, and Medical (ISM) bands from 2.402 GHz to 2.48 GHz. Once a handset is paired with hearing aids, the handset will remember the hearing aids and automatically pair with the hearing aids if the user disconnects the handset from the hearing aids in order to connect the hearing aids to another device, unless the user asks the handset model to forget the pairing.

41. The Bluetooth Special Interest Group (Bluetooth SIG) is a standards setting body that manages and oversees the Bluetooth standard.¹²³ Handset manufacturers must meet Bluetooth SIG standards in order to market their products as Bluetooth enabled devices. A network of patents applies to the technology, which is licensed to individual qualifying devices. Bluetooth SIG works with handset and hearing aid manufacturers when formulating new Bluetooth pairing standards. Recently, Bluetooth SIG worked with hearing aid manufacturers to standardize wireless coupling and wireless streaming for hearing aids using Bluetooth pairing technology that ensures that users have the best opportunity to pair their hearing aids with their handsets.¹²⁴ As a result of this work, Bluetooth SIG has introduced Bluetooth LE Audio, Bluetooth HAP, and the Public Access Profile specification for coupling with Auracast (Bluetooth Auracast) that allows wireless broadcast audio streaming from audio sources in public locations.¹²⁵ Bluetooth LE Audio, Bluetooth HAP, and Bluetooth Auracast are non-proprietary, low energy Bluetooth coupling standards.¹²⁶

42. We find that adopting a Bluetooth coupling requirement is supported by the record and is consistent with our revised definition of hearing aid compatibility. Bluetooth coupling technology uses an internal means of pairing handsets with hearing aids without altering the physical shape of the handset or requiring additional equipment. It relies on chipsets and antennas located within a handset model that allow the handset model to wirelessly connect to hearing aids over short distances. The chipsets use a codec to control audio quality, and the Bluetooth LE Audio standard utilizes an updated codec.¹²⁷ Bluetooth coupling technology provides a built-in pairing functionality that is not dependent on any add-on components. As a result, we find that Bluetooth coupling technology satisfies the internal requirement of our revised definition of hearing aid compatibility.

43. We also find that our Bluetooth coupling requirement is based on established technical standards for hearing aid compatibility that provide for effective use of handsets with hearing aids. The Bluetooth standard is maintained and overseen by the Bluetooth SIG standards setting body, which relies on handset and hearing aid manufacturer input when establishing or modifying the standard.¹²⁸ The standard uses a measurable performance standard that provides an objective measurement of interoperability to ensure the effective use of handsets with hearing aids. The term “Bluetooth” is a registered trademark, and the Bluetooth SIG enforces the trademark through a license enforcement program. Handset and hearing aid manufacturers cannot include the registered trademark on their

¹²² See Bluetooth SIG, *Learn About Bluetooth, Bluetooth Technology Overview, Bluetooth Wireless Technology*, <https://www.bluetooth.com/learn-about-bluetooth/tech-overview/> (last visited Oct. 10, 2024).

¹²³ Bluetooth SIG Reply at 1. Bluetooth SIG develops the standard, manages the standard’s qualification program, and protects the standard’s associated trademarks.

¹²⁴ *Id.* at 1-2.

¹²⁵ *Id.* at 2. Bluetooth Auracast is a type of Assistive Listening System (ALS) that uses the Bluetooth LE Audio connectivity platform. The technology allows one transmitter to broadcast to an unlimited number of receivers, such as hearing aids, and is useful for hearing audio in public spaces with high levels of ambient noise or poor acoustics. Hearing Tracker, *Auracast in Hearing Aids and Hearables: Bluetooth LE and the New Revolution in Connectivity*, <https://www.hearingtracker.com/auracast> (last visited Oct. 10, 2024).

¹²⁶ HAC Task Force Final Report at 14.

¹²⁷ See *infra* note 134.

¹²⁸ Bluetooth SIG Reply at 3.

products without ensuring that their products are properly qualified. The Bluetooth SIG monitors the marketplace to ensure that all products being sold as including Bluetooth pairing technology have successfully completed the Bluetooth Qualification Process.¹²⁹ For these reasons, we find that our Bluetooth coupling requirement meets the established technical standard for effective use of handsets with hearing aids as required by our revised definition of hearing aid compatibility.

44. Further, we find that Bluetooth coupling technology is usable, as required by our revised definition of hearing aid compatibility. The record indicates that many consumers prefer to pair their handsets to their hearing aids using a Bluetooth connection rather than an acoustic or telecoil connection.¹³⁰ This fact demonstrates that consumers find Bluetooth coupling usable and that they have the information that they need to connect their handsets to their hearing aids. Bluetooth coupling technology is widely included in many, if not most, handsets today, is well known to consumers, and is easy to use in terms of pairing handsets to hearing aids.¹³¹ The new Bluetooth HAP standard is specifically designed to enable handset models to connect directly to hearing aids using Bluetooth LE Audio.¹³² Bluetooth coupling technology gives consumers with hearing loss the same access to the functionality of their handsets as consumers without hearing loss. Consumers with hearing loss can connect and disconnect to their hearing aids in the same fashion and in the same time frame as consumers without hearing loss might connect their handsets to earbuds or an external speaker.

45. Further, unlike with acoustic or telecoil coupling, Bluetooth coupling does not require users to hold the handset next to their ears. Rather, users can place the handset nearby and keep their hands free.¹³³ This flexibility may in part account for the popularity of Bluetooth coupling. Bluetooth coupling also gives consumers with hearing loss the flexibility to disconnect their handsets from their hearing aids and to easily reconnect their handsets to their hearing aids at a later time. Bluetooth technology remembers established pairings. Finally, Bluetooth coupling delivers a high-quality audio signal that is purposely designed for audio transmission.¹³⁴ The quality of this connection is the same for consumers with hearing loss as it is for consumers without hearing loss. For these reasons, we find that Bluetooth coupling technology is usable and meets the requirements of ease-of-use, reliability, industry adoption, and consumer use and adoption.¹³⁵

46. While we adopt a Bluetooth coupling requirement that is not based on a specific Bluetooth standard, we agree with Accessibility Advocates that handset manufacturers must consider certain functional requirements when determining which specific Bluetooth coupling technology to include in their future handset models in order to satisfy our new Bluetooth coupling requirement. In order to meet our new Bluetooth coupling requirement, we require handset manufacturers to include Bluetooth coupling technology in their future handset models that: (1) utilizes a global, low power wireless technology standard for high quality audio voice streaming; (2) is a standalone non-proprietary implementation; (3) is a qualified implementation that has undergone testing to verify that the product

¹²⁹ Bluetooth SIG, *Bluetooth, Develop with Bluetooth, Trademark License Enforcement*, <https://www.bluetooth.com/develop-with-bluetooth/qualification-listing/trademark-license-enforcement/> (last visited Oct. 10, 2024).

¹³⁰ HAC Task Force Final Report at 20, 68; Samsung Comments at 4, 8.

¹³¹ Bluetooth SIG Reply at 1.

¹³² See *supra* note 9.

¹³³ HAC Task Force Final Report at 13.

¹³⁴ *Id.* at 14-15. Bluetooth LE Audio uses the new Low Complexity Communication Codec (LC3) that uses about half the data of the older Bluetooth codec for higher perceived audio quality. See Nordic Semiconductor, *Bluetooth LE Audio, Better audio quality, longer playtime and new features*, <https://www.nordicsemi.com/Products/Wireless/Bluetooth-LE-Audio> (last visited Oct. 10, 2024).

¹³⁵ See HAC Task Force Final Report at ii, 17.

conforms to the specifications it claims to support; (4) offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform, and inter-handset manufacturer functionality; and (5) uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use.¹³⁶ Below we adopt the Bluetooth handset model deployment benchmark that the HAC Task Force recommends, and we adopt a Bluetooth transition period that allows handset manufacturers and service providers sufficient time to adjust their handset model portfolios to meet our new Bluetooth coupling requirement.

47. Finally, we note that section 710(c) of the Communications Act requires the Commission to establish or approve such technical standards as are required to ensure the compatibility of handset models with hearing aids.¹³⁷ To verify our Bluetooth compatibility requirements, we require handset manufacturers to provide, as part of the statement required pursuant to 2.1033(d) of our rules, a sworn declaration attesting to the handset model's compliance with our Bluetooth compatibility requirements.¹³⁸ These sworn declarations must be in accordance with section 1.16 of our rules and provide: (1) the specific Bluetooth coupling standard included in each handset model; (2) that the relevant handset model has been tested to ensure compliance with the designated Bluetooth coupling standard; and (3) after the transition to a non-proprietary Bluetooth requirement, that the included Bluetooth coupling technology is consistent with our Bluetooth functionality requirements.¹³⁹

48. In addition, as the Commission has in the past, we will continue to monitor the use of Bluetooth coupling technology as an effective means of pairing handsets to hearing aids and should we become aware of an issue with Bluetooth coupling, we will initiate a proceeding to review the requirement. We will monitor compliance with our Bluetooth coupling requirement in part through the Commission's consumer complaint process.¹⁴⁰

D. Handset Model Deployment Benchmarks

49. After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR, part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exception.¹⁴¹ Further, after passage of the relevant transition period, handset manufacturers and service providers must ensure that each handset model in their handset model portfolios have at least two ways to pair with hearing aids. Specifically, after the relevant transition

¹³⁶ Accessibility Advocates Comments at 8-9. We decline to include a requirement that a Bluetooth coupling technology must also have "the ability to evolve and adapt to address [hearing device requirements] that are developed in the future," as the Accessibility Advocates request. *Id.* at 9. We find such a requirement would be too ambiguous for Bluetooth standards developers as well as handset manufacturers and service providers—and difficult for the Commission to enforce—given the uncertainty of what future hearing device requirements would entail.

¹³⁷ 47 U.S.C. § 610(c). This section also requires the Commission to establish or approve such technical standards as are required to enforce section 610 of the Communications Act.

¹³⁸ See 47 CFR §§ 2.1033(d), 20.19(b). Handset manufacturers seeking to certify handset models as hearing aid-compatible must include a statement indicating compliance with the test requirements of 47 CFR § 20.19. See also HAC Task Force Final Report at 19; Samsung Comments at 9-10.

¹³⁹ 47 CFR § 1.16; see also *supra* para. 46 and *infra* para. 79.

¹⁴⁰ See FCC, Consumer Inquiries and Complaints Center, Access for People with Disabilities, Accessibility Complaint Filing Categories, Hearing Aid Compatibility for Telephones, Wireless or mobile telephones (such as a cellphone or smartphone), <https://consumercomplaints.fcc.gov/hc/en-us/articles/204231424-Accessibility-Complaint-Filing-Categories> (last visited Oct. 10, 2024).

¹⁴¹ See *supra* note 8 (defining a handset model portfolio).

period is completed, 100% of all handset models in a handset model portfolio must meet acoustic coupling standards and 85% of these same handset models must also meet telecoil coupling standards. The remaining 15% of these handset models must meet our new Bluetooth coupling requirement, along with acoustic standards. The 15% of handset models that must meet the Bluetooth coupling requirement, along with acoustic requirements, can also contain telecoils, but they are not required to do so. If they do include telecoils, then these handset models would meet three pairing requirements, but the 15% requirement only requires these handset models to meet acoustic and Bluetooth coupling requirements.

50. Further, after the relevant 100% hearing aid compatibility transition period ends, any new handset model that handset manufacturers and service providers add to their handset model portfolios must meet applicable volume control requirements, as well as the other technical requirements of the 2019 ANSI Standard that is currently used for certification purposes. We will allow the volume control requirement to be met using the volume control waiver standard adopted in the *HAC Waiver Order*, as long as it remains in effect.¹⁴² This decision to impose a 100% volume control benchmark on handset models added to handset model portfolios after the applicable 100% hearing aid compatibility transition period ends allows handset manufacturers and service providers to continue to offer handset models certified under the 2011 ANSI Standard or older standards and to count these handset models for handset model deployment purposes, as long as these handset models were being offered for sale or use in the United States prior to the expiration of the relevant 100% hearing aid compatibility transition period. Finally, we will allow proprietary, as well as non-proprietary, Bluetooth coupling standards to satisfy our new Bluetooth pairing requirement during a 48-month transition period to an exclusively non-proprietary Bluetooth pairing requirement.

51. In the *100% HAC Notice*, we sought comment on the HAC Task Force's recommendation that we require all handset models offered for sale or use in the United States to have at least two forms of coupling. Based on the HAC Task Force's recommendation, we proposed to require that: (1) 100% of handset models be required to meet an acoustic coupling requirement; and (2) 100% of handset models be required to meet *either* a telecoil or a Bluetooth coupling requirement.¹⁴³ Specifically, at least 85% of handset models would be required to meet a telecoil requirement and at least 15% of handset models would be required to meet a Bluetooth coupling requirement.¹⁴⁴ Handset models meeting the Bluetooth coupling requirement could include telecoils, but would not be required to include telecoils.¹⁴⁵ We also proposed to allow handset manufacturers and service providers to continue to be able to offer for sale or use handset models certified as hearing aid-compatible under the 2011 ANSI Standard or older standards after the end of the relevant transition periods, as long as the handset models were being offered for sale or use prior to the expiration of the relevant transition periods.¹⁴⁶ In addition, we sought comment on whether we should adopt a volume control handset model deployment benchmark.¹⁴⁷

52. The record supports our adoption of the handset model deployment benchmarks that we proposed in the *100% HAC Notice*. This support includes requiring handset manufacturers and service providers to remove from their handset model portfolios all non-hearing aid-compatible handset models after the expiration of the relevant 100% hearing aid compatibility transition periods. The HAC Task

¹⁴² *HAC Waiver Order* at 2, 3, 14, paras. 4, 36, 42. The waiver standard became effective upon the release date of the *HAC Waiver Order* and will continue in effective for 24 months after the release date of the *HAC Waiver Order*. *Id.*

¹⁴³ *100% HAC Notice* at 22, para. 74; *see also* HAC Task Force Final Report at ii, 19.

¹⁴⁴ *100% HAC Notice* at 22, para. 74.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 23, para. 77.

¹⁴⁷ *Id.* at 25, para. 83.

Force's Final Report provides that after passage of the relevant transition period "All handset models must be hearing aid-compatible . . ."¹⁴⁸ The HAC Task Force states that all of its members support 100% hearing aid compatibility, and Accessibility Advocates confirm that 100% hearing aid compatibility was an area of consensus among members of the HAC Task Force.¹⁴⁹ The HAC Task Force's Final Report provides that 93% of the handset models offered by handset manufacturers for the reporting period July 1, 2021 to June 30, 2022 were rated as hearing aid-compatible and more recent reports indicate that this number is higher than 93%.¹⁵⁰ In fact, many handset manufacturers and service providers report that all of the handset models in their handset model portfolios are rated as hearing aid compatible.¹⁵¹ As a result, the removal of non-hearing aid-compatible handset models from the marketplace has been ongoing for years and is part of the natural progression of handset model development.

53. With respect to acoustic coupling, there is no disagreement in the record that we should adopt a 100% acoustic coupling benchmark.¹⁵² These same commenters also support our adopting the proposed 85/15% split between telecoil and Bluetooth coupling.¹⁵³ One commenter, however, supports a 100% benchmark for telecoil coupling claiming that consumers "who are hard of hearing prefer telecoil technology over Bluetooth technology."¹⁵⁴ We determine to maintain the current 85% benchmark requirement for telecoil coupling. This percentage is supported by the HAC Task Force and other commenters, including Accessibility Advocates.¹⁵⁵ According to a survey the HAC Task Force conducted, most consumers prefer to use Bluetooth connectivity for pairing handsets to hearing aids, as compared to telecoils.¹⁵⁶ The HAC Task Force found that telecoil use is stagnating.¹⁵⁷ The record indicates that consumers prefer Bluetooth coupling over telecoil coupling and that as consumers age into hearing loss they are likely to be more familiar with Bluetooth coupling than with telecoil coupling.¹⁵⁸ Rather than revising the 85% telecoil coupling benchmark at this time, we will maintain it and, as commenters suggest, monitor this issue going forward.¹⁵⁹ In the meantime, maintaining the 85% telecoil coupling requirement gives handset manufacturers space in 15% of their handset models for technological innovation if they wish to use it for something other than telecoils.

54. In monitoring this issue going forward, we will consider such factors as consumer and technology trends for Bluetooth and telecoil coupling and take into consideration consumer preferences and trends, changes in the marketplace, and developments in research and technical standards pertaining

¹⁴⁸ HAC Task Force Final Report at 14.

¹⁴⁹ HAC Task Force Comments at 3; Accessibility Advocates Comments at 4.

¹⁵⁰ HAC Task Force Final Report at 7; *see supra* note 72.

¹⁵¹ *See supra* note 71.

¹⁵² Accessibility Advocates Comments at 16; CTIA Comments at 3, 6-8; HAC Task Force Comments at 4; MWF Comments at 6; CCA Reply at 3, 5; CTA Reply at 1-2; CTIA Reply at 7; MWF Reply at 3.

¹⁵³ Accessibility Advocates Comments at 16; CTIA Comments at 3, 6-8; HAC Task Force Comments at 4; MWF Comments at 6; CCA Reply at 3, 5; CTA Reply at 1-2; CTIA Reply at 7; MWF Reply at 3.

¹⁵⁴ Lintz Comments at 5.

¹⁵⁵ Accessibility Advocates Comments at 16; CTIA Comments at 3, 6-8; HAC Task Force Comments at 4; MWF Comments at 6; CCA Reply at 3, 5; CTA Reply at 1-2; CTIA Reply at 7; MWF Reply at 3.

¹⁵⁶ HAC Task Force Final Report at 13.

¹⁵⁷ *Id.* at 22.

¹⁵⁸ CCA Reply at 3; CTIA Comments at 9; Samsung Comments at 10-11; *compare with* Lintz Comments at 5.

¹⁵⁹ Accessibility Advocates Comments at 13; CCA Reply at 3; CTIA Reply at 7-8; MWF Reply at 3.

to hearing aid compatibility.¹⁶⁰ We will monitor this issue in the years leading up to the end of the Bluetooth non-proprietary transition period and continue to monitor the issue thereafter. If we become aware that an adjustment to the handset model deployment benchmarks for telecoil and Bluetooth coupling might be warranted, we will take appropriate action. As always, we are committed to continuing to ensure that our wireless hearing aid compatibility provisions keep pace with technological advances and marketplace realities.

55. After the applicable 100% hearing aid compatibility transition date ends, handset manufacturers and service providers must ensure that 15% of the total number of handset models in their handset model portfolios meet our new Bluetooth coupling requirement, along with the applicable acoustic coupling requirement. While this set of handset models may include telecoils, they must meet the Bluetooth coupling requirement. We will allow handset manufacturers and service providers to meet the Bluetooth coupling requirement using either proprietary or non-proprietary Bluetooth coupling standards during the 48-month transition period to a non-proprietary Bluetooth coupling requirement, as discussed below. This decision to permit the use of proprietary Bluetooth coupling standards during the 48-month transition period reflects the marketplace reality that Apple and Android handset models use the proprietary Bluetooth coupling technologies MFi and ASHA standards, respectively, and that non-proprietary Bluetooth coupling standards, such as Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast, are newer standards that are now gaining market share.¹⁶¹

56. Allowing the continued use of proprietary Bluetooth coupling standards is consistent with section 710(e) of the Communications Act, which requires the Commission to “ensure that [hearing aid compatibility] regulations . . . encourage the use of currently available technology and do not discourage or impair the development of improved technology.”¹⁶² The HAC Task Force and Accessibility Advocates state that Bluetooth LE Audio and Bluetooth HAP will require some time to be universally adopted and that, in the meantime, we should allow the use of proprietary Bluetooth coupling standards during a transition period to a non-proprietary Bluetooth coupling standard.¹⁶³ The HAC Task Force asserts that the non-proprietary Bluetooth coupling standards Bluetooth LE Audio and Bluetooth HAP will become widely available in handset models in a few years.¹⁶⁴ Consistent with the requirements of section 710(e), therefore, we will allow the use of currently available technology by allowing the use of proprietary Bluetooth coupling standards without discouraging or impairing the development of improved coupling technology such as Bluetooth LE Audio and Bluetooth HAP.

57. We will not require handset manufacturers and service providers to stop offering handset models certified under the 2011 ANSI Standard or older standards after passage of the relevant 100% hearing aid compatibility transition periods, if these handset models were being offered for sale or use in the United States prior to the expiration of the relevant transition period. This approach is consistent with our traditional grandfathering rule that allows handset models certified as hearing aid-compatible to continue to be used to satisfy handset model deployment benchmarks as long as the handset models were being offered for sale or use in the United States prior to the transition date for exclusive use of the new

¹⁶⁰ Letter from Linda Kozma-Spytek, Consultant to the DHH RERC, to Marlene Dortch, Secretary, FCC, WT Docket No. 23-388, at 1-2 (Oct. 9, 2024); *see also* HAC Task Force Final Report at 22 (recommending the Commission consider updates to the handset model deployment benchmarks to reflect marketplaces changes, especially with regard to the telecoil and Bluetooth coupling benchmarks).

¹⁶¹ HAC Task Force Comments at 6.

¹⁶² 47 U.S.C. § 610(e).

¹⁶³ Accessibility Advocates Comments at 6; HAC Task Force Comments at 6.

¹⁶⁴ HAC Task Force Final Report at 14.

certification standard.¹⁶⁵ We will allow handset manufacturers and service providers to keep offering handset models that meet this grandfathering requirement in their handset model portfolios, and we will allow them to count these handset models for purposes of complying with the 100% acoustic coupling requirement and the 85% telecoil coupling requirement. We will also allow these handset models to be counted for purposes of meeting the 15% Bluetooth coupling requirement if these grandfathered handset models contain Bluetooth coupling technology that meets our Bluetooth coupling requirements.¹⁶⁶

58. With respect to the volume control benchmark, we adopt a 100% volume control benchmark requirement that applies to all new handset models that handset manufacturers and service providers add to their handset model portfolios after the passage of the relevant 100% hearing aid compatibility transition period. The 2019 ANSI Standard is currently the exclusive certification standard, and this standard includes a volume control requirement. After the relevant 100% hearing aid compatibility transition period ends, all new handset models that handset manufacturers and service providers add to their handset model portfolios must meet the requirements of the 2019 ANSI Standard, including the volume control requirements. By taking this approach we allow handset manufacturers and service providers to maintain grandfathered handset models in their handset model portfolios until they are replaced with handset models meeting the requirements of the 2019 ANSI Standard. As these grandfathered handset models are replaced through the natural handset model product cycle, an increasing number of handset models in handset model portfolios will meet volume control requirements. This result will benefit consumers by giving them more handset model options to choose from that meet volume control requirements.

59. We disagree with CTIA that it is premature to adopt a volume control benchmark, and that we should wait until the Commission adopts a new volume control standard before adopting a volume control benchmark.¹⁶⁷ The 2019 ANSI Standard is the exclusive certification standard in effect at this time, and this standard includes volume control certification requirements. In order to be certified as hearing aid-compatible, new handset models must meet the 2019 ANSI Standard's acoustic and telecoil certification requirements, as well as the standard's volume control requirements as recently modified by the *HAC Waiver Order*.¹⁶⁸ As of now, a new handset model cannot be certified as hearing aid-compatible without meeting volume control requirements. Therefore, adopting a 100% volume control benchmark for all new handset models added to handset model portfolios after passage of the relevant 100% hearing aid compatibility transition period is consistent with current certification requirements.

60. We also agree with those commenters who argue that if we adopt a volume control benchmark it should be based on the volume control waiver standard adopted in the *HAC Waiver Order*.¹⁶⁹ We will allow the volume control requirements to be met using the volume control waiver standard, as long as that standard remains in effect.¹⁷⁰ Specifically, we will allow new handset models that handset manufacturers and service providers add to their handset model portfolios to meet the volume control waiver standard as long as it remains in effect, as well as the full volume control standard or any

¹⁶⁵ 47 CFR § 20.19(b)(5); Accessibility Advocates Comments at 16-17; CTIA Comments at 3, 6-8, 10; HAC Task Force Comments at 4-5; MWF Comments at 10; Samsung Comments at 5-6; CCA Reply at 3, 5-6; CTIA Reply at 10; MWF Reply at 4.

¹⁶⁶ 47 CFR § 20.19(b)(5); *see also* Appendix B, Final Rules, section 20.19(b)(8).

¹⁶⁷ CTIA Reply at 9-10; *see also* MWF Reply at 7-8.

¹⁶⁸ *HAC Waiver Order* at 1, 13, paras. 1, 34, 36.

¹⁶⁹ Accessibility Advocates Comments at 17; MWF Comments at 11; Samsung Comments at 12.

¹⁷⁰ *HAC Waiver Order* at 1, 13, paras. 1, 34, 36.

new volume control standard the Commission adopts in the future.¹⁷¹ We agree with Accessibility Advocates that a volume control requirement is particularly important for consumers with hearing loss who primarily rely on acoustic coupling or who do not use hearing aids.¹⁷²

61. CTIA expresses concern that “there is likely to be a gap between the expiration of the current waiver and recognition by the Commission of the new ANSI volume control standard.”¹⁷³ CTIA requests that the Commission direct WTB to extend the waiver deadline as appropriate pending adoption of the new volume control standard.¹⁷⁴ We decline to take this step at this time. The *100% HAC Notice* did not seek comment on the issue of extending the volume control waiver deadline. We do not have a record on which to evaluate the merits of this request and to determine whether it is consistent with the public interest. Accessibility Advocates have also responded to CTIA’s request and asked that the Commission conduct a thorough review of the facts and circumstances before granting an extension to the waiver.¹⁷⁵ We encourage CTIA and its members to continue actively working towards the development of a new volume control standard. If CTIA believes that the Commission should extend the waiver deadline, it can file a waiver request asking the Commission to take this step and WTB will evaluate the request based on the waiver standard in the Commission’s rules.¹⁷⁶

62. We will not require handset models certified under the 2011 ANSI Standard or older standards to be recertified under the 2019 ANSI Standard. These handset models were not designed to meet the testing requirements of the 2019 ANSI Standard and, in order for these handset models to pass the 2019 ANSI Standard’s testing requirements, they might have to be physically altered.¹⁷⁷ Requiring these handset models to be physical altered would be costly and burdensome to handset manufacturers and inconsistent with our traditional grandfathering rule.¹⁷⁸ In addition, older hearing aid-compatible handset models tend to be lower priced than newer hearing aid-compatible handset models and requiring them to be removed from the marketplace or physically altered would deprive consumers of low price options.¹⁷⁹

63. We also emphasize that consistent with past practice, handset manufacturers and service providers that choose to offer compliant handset models through a central distribution point, rather than

¹⁷¹ See Letter from Thomas Goode, ATIS General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-3, at 1 (filed Sept. 27, 2024) (providing an update on the development of a new volume control standard for handset manufacturers to use to certify handset models as hearing aid compatible).

¹⁷² Accessibility Advocates Comments at 17.

¹⁷³ Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 23-388, at 3 (filed Oct. 8, 2024) (CTIA Ex Parte Letter); *see also* Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 23-388, at 3 (filed Oct. 10, 2024) (CTIA 2nd Ex Parte Letter).

¹⁷⁴ CTIA Ex Parte Letter at 4; *see also* CTIA 2nd Ex Parte Letter at 4.

¹⁷⁵ Letter from Linda Kozma-Spytek, Consultant to the DHH RERC, to Marlene Dortch, Secretary, FCC, WT Docket No. 23-388, at 1-2 (Oct. 11, 2024) (Accessibility Advocates Ex Parte).

¹⁷⁶ *See* 47 CFR § 1.3 (providing for waiver of a Commission rule for good cause shown); *see also* 47 CFR § 1.925(a) (the Commission may waive specific requirements upon request); 47 U.S.C. § 610(b)(3) (the Commission shall not grant a waiver unless the Commission determines on the basis of evidence in the record that granting a waiver is in the public interest, and the Commission shall consider the effect of the waiver on hearing-impaired individuals).

¹⁷⁷ Samsung Comments at 7; *see also* 47 U.S.C. § 610(f) (forbids the Commission from requiring the retrofitting of equipment to achieve the purposes of the Act, except for coin-operated telephones and telephones provided for emergency use).

¹⁷⁸ Samsung Comments at 6-7.

¹⁷⁹ CTIA Comments at 10; Samsung Comments at 7; CCA Reply at 5-6.

through individual retail outlets, must do so in a timely fashion. Specifically, the Commission has stated that it expects service providers to make their best efforts to provide compliant handset models to consumers that order them within 48 hours to an address designated by the consumer.¹⁸⁰ The Commission has specifically stated that using a central distribution point does not alter a service provider's existing obligation to provide compliant handset models in their retail stores for consumers to test as set forth in section 20.19(c)(4).¹⁸¹ To the contrary, the central distribution point approach merely provides the flexibility to offer compliant handset models through a central distribution point.¹⁸² As a result, handset manufacturers and service providers may not simply list a handset model as available on its website in order to meet our handset model deployment benchmarks. Rather, handset manufacturers and service providers must make their best efforts to ensure that all of the handset models they offer can be in the hands of consumers within 48 hours of the consumer ordering the handset model. Further, all handset manufacturers and service providers must use their best efforts to make available all hearing aid-compatible handset models that they offer for sale or use to consumers to test, in each retail store owned or operated by the handset manufacturer or service provider.¹⁸³ We take these steps to ensure that the hearing aid-compatible handset models that handset manufacturer and service providers indicate that they offer for sale or use are actually available to consumers to test and purchase.

64. CTIA objects to handset manufacturers being required to make available for consumers to test, in each retail store owned or operated by the handset manufacturer, all hearing aid-compatible handset models that they offer for sale or use.¹⁸⁴ In addition, CTIA objects to handset manufacturers and service providers being required to make their best efforts to ensure that all of the handset models they offer can be in the hands of consumers within 48 hours of the consumer ordering the handset model.¹⁸⁵ We note that service providers are already required to make available for consumers to test, in each retail store owned or operated by the service provider, all of its handset models that are hearing aid-compatible under the Commission's hearing aid compatibility rules.¹⁸⁶ In addition, the Commission adopted the 48-hour policy in the *2003 HAC Order* and handset manufacturers and service providers have been required to abide by this requirement for over twenty years.¹⁸⁷

65. We acknowledge CTIA's concerns about the practical effect of the in-store testing requirement now that 100% of handset models offered for sale or use in the United States must be hearing aid compatible.¹⁸⁸ Given supply chain challenges, it may be difficult for service providers and handset manufacturers to make available all of their handset models in every retail store at all times. On the other hand, we agree with the Accessibility Advocates on the value of in-store testing "so that consumers can make informed decisions about which phones will meet their HAC needs."¹⁸⁹ Accordingly, while we maintain an in-store testing requirement, we will modify the rule to require handset manufacturers and service providers *to use best efforts* to make available for consumers to test, in each retail store owned or operated by the service provider, all of its handset models that are hearing aid-compatible under the Commission's hearing aid compatibility rules. If a handset model is not available in-store for testing, the

¹⁸⁰ *2003 HAC Order*, 18 FCC Rcd at 16780-81, para. 68.

¹⁸¹ *Id.*; see also 47 CFR § 20.19(c)(4).

¹⁸² *2003 HAC Order*, 18 FCC Rcd at 16780-81, para. 68.

¹⁸³ 47 CFR § 20.19(c)(4); see also Appendix B, Final Rules, section 20.19(c)(7).

¹⁸⁴ CTIA Ex Parte Letter at 5-6; see also CTIA 2nd Ex Parte Letter at 5-6.

¹⁸⁵ CTIA Ex Parte Letter at 5-6; see also CTIA 2nd Ex Parte Letter at 5-6.

¹⁸⁶ 47 CFR § 20.19(c)(4).

¹⁸⁷ *2003 HAC Order*, 18 FCC Rcd at 16780-81, para. 68.

¹⁸⁸ CTIA Ex Parte Letter at 5; see also CTIA 2nd Ex Parte Letter at 5.

¹⁸⁹ Accessibility Advocates Ex Parte at 3.

handset manufacturer or service provider must use its best efforts to make the handset model available for the consumer to test within 48 hours either by shipping the handset model to the store or to the consumer's home. We maintain the 48-hour central distribution policy and include it in our rules to make clear the obligation that service providers and handset manufacturers that choose to offer compliant handsets through a central distribution point, rather than through individual retail outlets, must do so in a timely fashion.¹⁹⁰

66. We find these requirements to be reasonable because if a handset manufacturer or service provider lists a handset model as available for sale or use in the United States on its publicly accessible website or counts the handset model for handset model deployment benchmark purposes, then the handset model should be available to consumers with hearing loss in a timely manner for testing and purchase.¹⁹¹ We also note that the Commission's mandatory handset model disclosure language requires handset manufacturers and service providers to notify consumers when a handset model includes air interfaces or frequency bands not covered by the applicable certification standard and "to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interference noise."¹⁹² As the Commission has previously stated, in-store testing ensures that persons with hearing aids have a meaningful opportunity to identify and become comfortable with a handset model.¹⁹³ Further, in-store testing allows consumers to evaluate volume and interference levels of a given handset model they are considering for purchase and may allow consumers to avoid restocking fees.¹⁹⁴ We also continue to encourage 30-day trial periods and flexible return policies for consumers seeking to obtain hearing aid-compatible handset models, as well as the use of in-store call-out cards that provide information about the compatibility of handset models.¹⁹⁵

67. Finally, we will allow handset manufacturers and service providers to round down to the nearest whole number of handset models to meet the 85% telecoil benchmark requirement and to round up to the nearest whole number of handset models to meet the 15% Bluetooth coupling requirement. We will allow rounding in order to avoid the partial compliance issue that would result without rounding.¹⁹⁶ For instance, if a handset manufacturer or a service provider adds three new handset models to its handset model portfolio that already includes two handset models, four of these five handset models would have to meet the telecoil certification requirement and the remaining one would have to meet the Bluetooth coupling requirement.¹⁹⁷ Each of these handset models would also have to meet the relevant acoustic

¹⁹⁰ 2003 HAC Order, 18 FCC Rcd at 16780-81, para. 68.

¹⁹¹ See 100% HAC NPRM at 33, 36, paras. 114, 126; see also Accessibility Advocates Ex Parte at 3.

¹⁹² 47 CFR § 20.19(f)(2)(v); see also 100% HAC NPRM at 30, para. 103.

¹⁹³ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221, 11239-40, para. 40 (2005) (2005 HAC Order); see also Accessibility Advocates Ex Parte at 3.

¹⁹⁴ 2021 HAC Order, 36 FCC Rcd at 4585, para. 45.

¹⁹⁵ 2005 HAC Order, 20 FCC Rcd at 11239-40, para. 40; see also 2021 HAC Order, 36 FCC Rcd at 4584-85, paras. 44-45.

¹⁹⁶ See 2016 HAC Order, 31 FCC Rcd at 9343-44, 9348-49, paras. 20, 22, 33 (discussing the Commission's rounding rules with respect to the 66% and 85% handset model deployment benchmarks and the permitted use of rounding to meet past Commission imposed benchmarks).

¹⁹⁷ In this example, 85% of the five handset models equals 4.25 handset models. Therefore, the handset manufacturer or service provider may round down to the nearest whole number of handset models (e.g., 4) to meet the telecoil coupling requirement and round up to the nearest whole number of handset models (e.g., 1) to meet the Bluetooth coupling requirement. This results in four handset models having to meet the telecoil coupling requirement and one handset model having to meet the Bluetooth coupling requirement. In addition, the three new handset models would need to meet applicable acoustic requirements and, if certified under the 2019 ANSI Standard, volume control requirements.

coupling requirement and, if certified under the 2019 ANSI Standard, volume control requirements. After the relevant 100% hearing aid compatibility transition period passes, any rounding for the 85/15% split must still ensure that a handset manufacturer or service provider's entire handset model portfolio meets the requirement that *all* handset models in the portfolio include at least two forms of coupling. In other words, all handset models in a handset manufacturer or service provider's handset model portfolio must meet either: (1) the relevant acoustic and telecoil coupling requirements or (2) the relevant acoustic and Bluetooth coupling requirements. A handset model could meet all three coupling requirements, but it is only required to meet two of the coupling requirements.

E. Transition Periods for 100% Hearing Aid Compatibility

68. We adopt the 100% hearing aid compatibility transition periods that we proposed in the *100% HAC Notice*.¹⁹⁸ Specifically, we adopt a 24-month transition period for handset manufacturers to meet the 100% hearing aid compatibility requirement, starting from the effective date of the amended rule adopting the 100% hearing aid compatibility requirement, and a 30-month transition period for nationwide service providers. Further, we adopt a 42-month transition period for non-nationwide service providers. Once the applicable transition period ends, handset manufacturers and service providers must meet the handset model deployment benchmarks discussed above. Handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their handset model portfolios without exception.¹⁹⁹

69. In the *100% HAC Notice*, we recognized that our proposed transition periods were shorter than the 48-month transition period the HAC Task Force recommends for handset manufacturers and the 60-month transition period it recommends for service providers.²⁰⁰ The Commission noted, however, that it has previously relied on 24-month transition periods when transitioning to new technical standards and that the Commission has previously found that 24-month transition periods provide the appropriate balance between product development cycles for handset manufacturers and the needs of consumers with hearing loss to receive the benefits of the new technical standard.²⁰¹ The Commission also observed that the transition periods it was proposing for service providers would allow these companies to make handset models certified using the latest certification standards available to consumers faster than would be the case if the Commission accepted the HAC Task Force's longer 60-month transition period recommendation.²⁰²

70. While the 100% hearing aid compatibility transition periods that we are adopting are shorter than the 48- and 60-month transition periods proposed by the HAC Task Force, we agree with Accessibility Advocates that the transition periods are reasonable.²⁰³ Despite CTIA's assertion that the 48- and 60-month transition periods were carefully negotiated and represent a consensus position, we note that Hearing Loss Association of America (HLAA), which was a member of the HAC Task Force, supports our shorter transition periods.²⁰⁴ Further, contrary to CTIA's assertion, we find our transition periods reflect real-world realities.²⁰⁵ Our transition periods are based on handset manufacturers being

¹⁹⁸ *100% HAC Notice* at 27, para. 89.

¹⁹⁹ See *supra* para. 52.

²⁰⁰ *100% HAC Notice* at 27, para. 90.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Accessibility Advocates Comments at 18-19; see also MWF Comments at 11 (MWF does not oppose a 24-month handset manufacturer transition period as long as the waiver volume control standard remains in place).

²⁰⁴ CTIA Comments at 3, 11; HAC Task Force Final Report at 3 (listing HLAA as a member of the HAC Task Force); Accessibility Advocates Comments at ii (listing HLAA as a member of Accessibility Advocates).

²⁰⁵ CTIA Comments at 12.

able to use: (1) the existing 2019 ANSI Standard for acoustic and telecoil certification requirements; (2) the volume control waiver standard adopted in the *HAC Waiver Order*; and (3) a Bluetooth standard of their own choosing, including the continued use of proprietary Bluetooth standards during a 48-month transition period to a non-proprietary requirement, as discussed below.

71. The Commission adopted the 2019 ANSI Standard in February 2021, and it has been the exclusive hearing aid compatibility testing standard since December 5, 2023.²⁰⁶ Further, in September 2023, WTB granted a limited waiver of the 2019 ANSI Standard's volume control testing requirements at the request of handset manufacturers and service providers.²⁰⁷ Therefore, the current hearing aid compatibility testing standards are well known to handset manufacturers and will have been in place well before our 100% hearing aid compatibility transition periods start to run. Indeed, new handset models can only be certified as hearing aid-compatible using the 2019 ANSI Standard and new handset models are already being marketed as meeting the requirements of the 2019 ANSI Standard.²⁰⁸ In addition, we are allowing handset manufacturers to satisfy our new Bluetooth coupling requirement using Bluetooth coupling standards that they already include in their current handset models. This allowance includes both proprietary and non-proprietary Bluetooth coupling standards.

72. The vast majority of handset models being offered for sale or use in the United States today already meet current hearing aid compatibility certification requirements and include some form of Bluetooth coupling technology.²⁰⁹ By adopting our proposed transition periods, we are ensuring that the benefits of our revised hearing aid compatibility rules reach consumers sooner than would be the case using the HAC Task Force's longer transition periods of 48 months for handset manufacturers and 60 months for service providers. Further, as the Commission has previously found when adopting new technical standards, we find that a 24-month transition period for handset manufacturers provides the appropriate balance between product development cycles and ensuring that consumers with hearing loss gain the benefits of our new standards in a timely manner.²¹⁰ In addition, the transition periods we adopt for nationwide and non-nationwide service providers will allow these companies time to adjust their handset model portfolios to meet our 100% hearing aid compatibility requirement while also ensuring faster consumer access to the latest hearing aid-compatible handset models than would be the case using the HAC Task Force's longer 60-month transition period recommendation.

F. Non-Proprietary Bluetooth Standard Benchmark and Transition Period

73. With respect to the Bluetooth coupling requirement, we adopt a 48-month transition period from the effective date after which handset manufacturers and service providers will have to ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements. After this 48-month transition period ends, we will not allow proprietary Bluetooth coupling technologies to meet the 15% Bluetooth coupling requirement. Only handset models with non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements will be allowed to satisfy the 15% requirement. These handset models may also include proprietary Bluetooth coupling technology if

²⁰⁶ 2021 *HAC Order*, 36 FCC Rcd at 4570, 4576, paras. 9, 22; *HAC Extension Order*, 38 FCC Rcd at 3400, para. 1.

²⁰⁷ *HAC Waiver Order* at 1, para. 1.

²⁰⁸ See FCC, Filing Hearing Aid Compatibility Reports and Certifications, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Sept. 26, 2024) (setting forth the latest handset manufacturer compliance reports).

²⁰⁹ HAC Task Force Final Report at 7 (93% handset model compliance for the reporting period of July 1, 2021 to June 30, 2022); Bluetooth SIG Reply at 1, 3 (almost 100% of existing handset models support the use of Bluetooth technology).

²¹⁰ 100% *HAC Notice* at 27, para. 90.

technically feasible, but they must contain a non-proprietary Bluetooth coupling standard that is completely separate from the proprietary standard.

74. The HAC Task Force recommends allowing the use of both proprietary and non-proprietary Bluetooth standards, at least through a transition period to a non-proprietary Bluetooth requirement.²¹¹ The HAC Task Force, however, does not recommend a transition period for transitioning to a non-proprietary Bluetooth requirement. Rather, the HAC Task Force states that the Commission should assess whether new non-proprietary Bluetooth specifications have become more widespread.²¹² In the *100% HAC Notice*, we sought comment on whether we should mandate that only non-proprietary Bluetooth standards could be used to meet our proposed new Bluetooth coupling requirement.²¹³ We further sought comment on whether we should permit the use of proprietary Bluetooth standards on an interim basis as the industry transitions to full use of non-proprietary standards, such as Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast.²¹⁴ In response to the *100% HAC Notice*, MWF and Samsung argue that the Commission should allow the use of proprietary Bluetooth standards at least on an interim basis in order to allow new handset models with non-proprietary Bluetooth standards to come to market.²¹⁵ Neither commenter, however, states how long of a transition period we should allow.

75. As the HAC Task Force requests, we have assessed the development of non-proprietary Bluetooth coupling standards and based on this assessment, we adopt a 48-month transition period after which only non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements may be used to satisfy the Bluetooth coupling requirement. The HAC Task Force states that it “anticipates that handset and hearing device manufacturers will widely adopt the Bluetooth LE Audio framework and HAP specification.”²¹⁶ In fact, the HAC Task Force cites a report that annual Bluetooth LE Audio device shipments will reach three billion by 2027.²¹⁷ Further, the HAC Task Force states that Bluetooth LE Audio and Bluetooth HAP specifications are recognized industry standards, are non-proprietary, and will be interoperable across many devices.²¹⁸ Further, the HAC Task Force asserts that “[o]ngoing improvements to Bluetooth LE Audio add functionality that has the potential to greatly benefit hearing device users and enhance compatibility, namely standardized profiles for Bluetooth hearing aids, a modern codec (LC3), and multi-stream support and broadcast audio.”²¹⁹

76. Bluetooth SIG states that Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast coupling technologies are currently in place and freely available.²²⁰ Bluetooth SIG confirms that these standards are non-proprietary, low energy coupling standards that directly support and will satisfy the Commission’s 100% hearing aid compatibility requirement.²²¹ Further, Bluetooth SIG asserts that

²¹¹ HAC Task Force Final Report at 20.

²¹² *Id.*

²¹³ *100% HAC Notice* at 18-19, paras. 55-59.

²¹⁴ *Id.* at 19-20, paras. 60-65.

²¹⁵ MWF Comments at 4-5, 7-8; Samsung Comments at 9; *see also* HAC Task Force Comments at 6.

²¹⁶ HAC Task Force Final Report at 14.

²¹⁷ *Id.* at 14 & n.40.

²¹⁸ *Id.* at 14.

²¹⁹ *Id.*; *see also* Samsung Comments at 4 (Samsung includes Bluetooth Auracast technology in its new Galaxy handset models).

²²⁰ Bluetooth SIG Reply at 2.

²²¹ *Id.*; *see also* Accessibility Advocates Comments at 12-13.

these coupling standards were developed with open participation from mobile handset and hearing aid manufacturers.²²² Bluetooth SIG states that these coupling standards will not impact the affordability of low-cost handset models or adversely affect low-income consumers.²²³ Similarly, Accessibility Advocates assert that it is anticipated that the communications industry will adopt Bluetooth LE Audio and Bluetooth HAP profiles going forward.²²⁴ Accessibility Advocates state that if Bluetooth LE Audio and Bluetooth HAP are rolled out as a universal solution to Bluetooth coupling with hearing aids, it has every reason to expect wide consumer adoption and use of these coupling standards.²²⁵

77. Based on the above comments, we find that adopting a non-proprietary Bluetooth coupling requirement after a 48-month transition period is supported by the record. Commenters indicate that Bluetooth LE Audio and Bluetooth HAP will be widely available in handset models over the next few years. Permitting the use of proprietary Bluetooth coupling technology, during this 48-month transition period simply reflects the marketplace reality that Apple and Android handsets use proprietary Bluetooth coupling technology for hearing aid coupling. According to the HAC Task Force, 56% of the handset models that they analyzed supported one of the proprietary Bluetooth coupling methods and that this support was increasing over time.²²⁶ Further, the HAC Task Force states that: “All models of iPhone support Apple’s MFi protocol (available since 2013), and most recent Android handsets support the Google ASHA protocol (available on handsets since 2018).”²²⁷

78. While the HAC Task Force does not recommend a transition period to a non-proprietary Bluetooth coupling requirement, it does recommend that we adopt a 48-month transition period before we require handset manufacturers to meet our 100% hearing aid compatibility requirement. Our 48-month transition period to a non-proprietary Bluetooth coupling requirement is consistent with this 48-month transition recommendation.²²⁸ Given that the average handset model development cycle is 24 months, we find that a 48-month transition period should provide more than enough time for handset manufacturers to produce new handset models that include non-proprietary Bluetooth coupling technology meeting our requirements.²²⁹ In addition, adopting a 48-month transition period will encourage handset manufacturers to incorporate non-proprietary Bluetooth standards, such as Bluetooth LE Audio, Bluetooth HAP, and Bluetooth Auracast, into their handset models.²³⁰ This result will benefit consumers with hearing loss by ensuring the development of more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids, and reduce the issue of certain handset models only being able to pair with certain hearing aids.²³¹ Our 48-month transition period will reduce fragmentation in the marketplace and will benefit consumers by giving them a wider selection of handset models that will pair with their hearing aids.²³²

²²² Bluetooth SIG Reply at 2.

²²³ *Id.* at 3.

²²⁴ Accessibility Advocates Comments at 18.

²²⁵ *Id.* at 12-13.

²²⁶ HAC Task Force Final Report at 34.

²²⁷ *Id.*

²²⁸ *Id.* at ii; Accessibility Advocates Comments at 15-16.

²²⁹ 100% HAC Notice at 27, para. 90.

²³⁰ Google is already incorporating Bluetooth HAP into their handset models. *See* Support, Google, *Hearing aid compatibility for Pixel Phones*, <https://support.google.com/pixelphone/answer/9393002> (last visited Oct. 10, 2024). Samsung states that it provides Bluetooth Auracast technology in its Galaxy handset models. Samsung Comments at 4.

²³¹ CTA Reply at 7.

²³² Accessibility Advocates Comments at 11-12; CTIA Reply 9.

79. At the end of the 48-month transition period, handset manufacturers will continue to have the freedom to choose which non-proprietary Bluetooth coupling technology they incorporate into their handset models, as long as the technology meets our new definition of hearing aid compatibility and the related Bluetooth functionality requirements. These functionality requirements mean that after the 48-month transition period ends, the Bluetooth coupling requirement may only be met using Bluetooth coupling technology that: (1) utilizes a global, low power wireless technology standard for high quality audio voice streaming; (2) is a standalone non-proprietary implementation; (3) is a qualified implementation that has undergone testing to verify that the product conforms to the specifications it claims to support; (4) offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform and inter-handset manufacturer functionality; and (5) uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use.²³³

80. After the transition period, handset manufacturers and service providers will be able to continue to include proprietary Bluetooth coupling technology in their handset models, as long as 15% of their handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that meets our requirements. We will also allow handset models to include both proprietary and non-proprietary Bluetooth coupling technology if technically feasible, but only non-proprietary Bluetooth coupling technology that meets our requirements can be used to satisfy the 15% Bluetooth coupling requirement. After the 48-month transition period ends, handset manufacturers and service providers must ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that complies with our requirements. We will not allow handset manufacturers and service providers to use handset models with only proprietary Bluetooth coupling technology to meet our 15% non-proprietary Bluetooth coupling requirement. If we were to allow it, we would undercut our non-proprietary requirement and our goal of increasing universal connectivity between handset models and hearing aids.

81. We are aware that proprietary Bluetooth coupling standards are extensions of non-proprietary Bluetooth standards, such as Bluetooth Classic.²³⁴ We will not allow a proprietary Bluetooth coupling standard, however, to satisfy our non-proprietary Bluetooth coupling requirement on the basis that the proprietary Bluetooth coupling standard is simply an extension of a non-proprietary Bluetooth coupling standard. Proprietary Bluetooth coupling standards, such as the MFI and ASHA standards, cannot be used to satisfy our 15% non-proprietary Bluetooth coupling requirement. After the 48-month transition period, the 15% non-proprietary Bluetooth coupling requirement may only be satisfied by an exclusively non-proprietary Bluetooth coupling standard that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements.

G. Hearing Aid Compatibility Settings for Handset Models

82. After the expiration of the handset manufacturers' 100% hearing aid compatibility transition period, we require that all new handset models must come out-of-the-box with their hearing aid compatibility related acoustic coupling and volume control functions turned on by default. We will allow, however, secondary settings to turn on the handset model's telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model. If one of these secondary settings is turned on by the consumer, we will allow the hearing aid compatibility related acoustic coupling function to be turned off. We will also allow volume control compliance to be altered to the extent technically necessary to meet full telecoil connectivity requirements as long as consumers and the Commission are fully informed of this alteration. We will not allow volume control functionality to be altered to meet Bluetooth or acoustic coupling requirements. We require handset manufacturers to ensure that their handset models have settings for acoustic, telecoil, or Bluetooth coupling (depending on

²³³ See *supra* para. 46.

²³⁴ Bluetooth SIG Reply at 1-2; MWF Comments at 4-5; Samsung Comments at 4.

the coupling functionality included) and volume control functionality that are clearly labeled and allow consumers to easily find these settings and to turn these functions on or off as they desire.

83. In the *100% HAC Notice*, we observed that our hearing aid compatibility rules do not address whether a handset model by default must come out-of-the-box with its hearing aid compatibility functions fully turned on, or whether it is permissible for handset manufacturers to require users to turn these functions on by going into the handset model's settings.²³⁵ We also observed that our rules do not address whether a handset model can have two different settings—one setting that turns on acoustic coupling and volume control, but not telecoil coupling, and a second separate setting that turns on the handset model's telecoil coupling capabilities.²³⁶ Further, we observed that our rules do not address whether a handset model in telecoil mode has to continue to fully meet acoustic and volume control requirements.²³⁷ Finally, we observed that while the HAC Task Force did not address this settings issue, the HAC Task Force recommends that the Commission adopt an additional form of connectivity in the form of a Bluetooth coupling requirement.²³⁸ This recommendation means that handset models would have to meet acoustic coupling and volume control requirements and—depending on the handset model—would also have to meet either a telecoil or Bluetooth coupling requirement.²³⁹ As a result of these potential alternative coupling requirements, we sought comment on the related handset model settings issue.²⁴⁰

84. Accessibility Advocates state that they “support a requirement for handset models to come out-of-the-box with their acoustic and telecoil functions fully turned on as default features so long as this is technically feasible.”²⁴¹ Accessibility Advocates also assert that “[a]dditionally, phones should be in compliance with the acoustic RF and volume control requirements right out-of-the-box.”²⁴² MWF argues that flexibility and options are in the best interests of consumers and states that there should be separate settings for acoustic, telecoil, and Bluetooth coupling.²⁴³ MWF further argues that it does not support Accessibility Advocates' position that handset models should come out-of-the-box with their acoustic and telecoil functions turned on by default.²⁴⁴ MWF expresses concern that having these functions turned on out-of-the-box could lead to acoustic shock and to higher battery usage than the user might anticipate.²⁴⁵ MWF believes that a better course of action is for users to opt-in to the features offering higher volume and telecoil operation.²⁴⁶

²³⁵ *100% HAC Notice* at 28, para. 95.

²³⁶ *Id.* We note that staff has informally advised handset manufacturers that handset models cannot have separate selection for volume control compliance and another for RF interface and telecoil compliance. *Id.* at 29, para. 96. Staff has stated that only one hearing aid compatibility selection is permitted and multiple selections are not allowed. FCC, Office of Engineering and Technology, Laboratory Division, Hearing Aid Compatibility, Frequently Asked Questions, at 4, Q10 (July 20, 2022). The document can be found at this link: https://apps.fcc.gov/kdb/GetAttachment.html?id=vuKe73LLxgCw4J24DvWvyQ%3D%3D&desc=285076%20D03%20HAC%20FAQ%20v01r06&tracking_number=36388.

²³⁷ *100% HAC Notice* at 29, para. 95.

²³⁸ *Id.* at 29, para. 97.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Accessibility Advocates Comments at 19.

²⁴² *Id.* at 20.

²⁴³ MWF Comments at 11.

²⁴⁴ MWF Reply at 5-6.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

85. After considering the record on this issue, we decide that, after the handset manufacturer 100% hearing aid compatibility transition period ends, all handset models must come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on by default. This decision is consistent with our proposal in the *100% HAC Notice*.²⁴⁷ We find that having handset models come out-of-the-box with acoustic coupling and volume control functionality turned on by default benefits consumers with hearing loss who use hearing aids and those consumers with hearing loss who do not use hearing aids. This requirement will improve the listening experience of consumers who have hearing loss, and it does not impact the listening experience of consumers who do not use hearing aids or do not have hearing loss.

86. Further, requiring volume control functionality to be fully turned on by default allows all consumers, regardless of whether they have hearing loss, to adjust the speech level of their handsets during voice calls to their preferred, comfortable listening level. Volume control functionality provides a range over which the level of speech can be increased and decreased to a level that meets the needs of consumers no matter whether they use hearing aids or have hearing loss.²⁴⁸ Further, requiring volume control functionality to be turned on by default benefits consumers who do not use hearing aids and, therefore, might not know to look under a setting marked as hearing aid compatibility to turn on the handset model's volume control functionality.²⁴⁹ While we require handset models to come out-of-the-box with volume control functionality turned on by default, we will allow handset models to have a setting whereby consumers can turn this functionality off. This requirement allays concerns with respect to acoustic shock and battery usage.²⁵⁰ Consumers will have the ability not only to adjust the volume of their handset models to meet their listening needs, but also to turn this function off if they so desire.

87. In addition to these default out-of-the-box requirements, handset models may have a separate setting that turns on a handset model's hearing aid compatibility related telecoil coupling functionality if the handset model includes telecoil coupling capability. Acoustic and telecoil coupling represent two separate ways for handset models to pair with hearing aids. Hearing aids operating in acoustic coupling mode receive sounds through a microphone and then amplify all sounds surrounding the consumer, including both desired and unwanted ambient noise.²⁵¹ Hearing aids operating in telecoil coupling mode turn off their microphone to avoid amplifying unwanted ambient noise, and instead use a telecoil to receive only audio signal-based magnetic fields generated by telecoil coupling capable handset models.²⁵² When a handset model is paired with hearing aids using telecoils it is not necessary for the handset's acoustic coupling function to be left on because the hearing aids microphone has been turned off.²⁵³

88. We will also allow a separate setting for Bluetooth coupling that is a distinct setting from the default out-of-the-box acoustic and the alternative telecoil settings. This approach is consistent with allowing consumers to have a choice as to how they pair their handsets with their hearing aids. Most consumers are already familiar with how to connect their handsets to their hearing aids using Bluetooth coupling and, therefore, there is less concern about consumers being able to locate this feature as compared to the other two methods of pairing handsets with hearing aids.²⁵⁴ Since Bluetooth coupling

²⁴⁷ *100% HAC Notice* at 29, para. 98; *see also* Accessibility Advocates Comments at 19-20; MWF Comments at 11.

²⁴⁸ Accessibility Advocates Comments at 22.

²⁴⁹ *Id.*

²⁵⁰ MWF Reply at 5-6.

²⁵¹ *See supra* note 33.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Accessibility Advocates Comments at 20.

represents an alternative way to pair handsets to hearing aids, we will allow handset models in Bluetooth coupling mode to turn off acoustic and telecoil coupling functionality. Handset models only need to pair with hearing aids through one coupling method at a time.

89. As discussed above, we require new handset models to come out-of-the-box with volume control functionality turned on by default. This requirement means that, if a new handset model is paired to hearing aids using acoustic, telecoil, or Bluetooth coupling technology the handset model's volume control functionality must be turned on, unless the consumer has turned it off. While the handset model must have a setting that allows the consumer to turn this functionality off, the handset model must meet volume control certification requirements in each of these pairing modes. We are aware, however, that when a handset model is paired to hearing aids using telecoil coupling, not all volume control certification requirements may be met.²⁵⁵ In that situation, we will allow a slight deviation from volume control certification requirements only to the extent absolutely necessary to meet full telecoil coupling requirements. Any handset model that does not meet full volume control requirements in telecoil coupling mode must fully disclose this information to consumers and explain how this affects the handset model's operations in telecoil mode. A consumer must be able to understand that the handset model in telecoil coupling mode does not meet full volume control certification requirements and understand how this deviation affects the handset model's operation in telecoil mode. Further, we require that handset manufacturers disclose this information in their handset model equipment certification authorization application along with supporting documentation explaining why the handset model cannot meet full volume control functionality in telecoil coupling mode and how much of a deviation there is from fully meeting the volume control requirement.

90. We are not aware of a similar issue with respect to volume control functionality when a handset model is paired with hearing aids using Bluetooth coupling technology. We did not receive any comments on this issue even though the *100% HAC Notice* sought comment on the issue.²⁵⁶ Therefore, we require handset models to meet the full volume control standard that the handset model was certified as meeting when paired with hearing aids using Bluetooth coupling technology. Given that Bluetooth coupling is similar to acoustic coupling in that neither method requires any additional equipment, as compared to telecoil coupling, we do not anticipate any issues with handset models meeting the full volume control requirement that the handset model was certified as meeting when pairing with hearing aids using the Bluetooth coupling mode.

91. After the handset manufacturers' 100% hearing aid compatibility transition date ends, we require handset manufacturers to ensure that all new handset models that they add to their handset model portfolios have settings for each coupling method included in the handset model, as well as a setting for volume control functionality, if the handset model is certified under the 2019 ANSI Standard. Each of these settings must be clearly labeled and usable. Consumers must be able to easily find these settings without the settings being obscured or hidden by sub-menus. The settings must allow consumers to be able to turn each of these functions on or off as they wish in order to meet their individual listening needs. At this time, we will not establish standard hearing aid compatibility settings or nomenclature for each setting. We will continue to allow handset manufacturers flexibility in this manner as long as the settings are easy to find and allow consumers the freedom to adjust the settings as they wish. We also note that below we establish updated labeling and disclosure requirements, as well as website posting requirements, for handset manufacturers and service providers. These requirements ensure that consumers have the information they need to understand the hearing aid compatibility functions of their handset models and how to find and use these compatibility features.

²⁵⁵ Certain handset models may not be able to meet the frequency response requirements for telecoil and volume control at the same time. See Accessibility Advocates Comments at 19-20.

²⁵⁶ *100% HAC Notice* at 29, para. 99.

H. Consumer Notification Provisions

1. Labeling and Disclosure Requirements

92. We revise our external printed package label requirements and our related requirements concerning information that must be included within the handset model's packaging in the form of either a printed insert or a printed handset manual.²⁵⁷ We update these requirements to reflect our new handset model certification standards related to our 100% hearing aid compatibility requirement. Section 20.19(f) of the Commission's rules provides that certain handset model information must be included on a handset model's external printed package label and additional handset model information must be included within a handset model's packaging.²⁵⁸ In the *100% HAC Notice*, we tentatively concluded that we would revise these requirements to require a handset model's external printed package label to state whether the handset model includes telecoil or Bluetooth coupling technology or both types of coupling technology and, if the handset model includes Bluetooth coupling technology, which Bluetooth coupling technology the handset model includes.²⁵⁹ We also tentatively concluded that we should revise the consumer information that must be included within a handset model's packaging to require the printed insert or the printed handset manual to include this same information.²⁶⁰ Further, we tentatively concluded that, if we decided to allow handset models to have default and secondary compatibility settings, we would modify our internal packaging requirements to require the printed insert or printed handset manual to include an explanation of each of these settings, what each setting does and does not include, and how to turn these settings on and off.²⁶¹

93. Accessibility Advocates and MWF support modifying our labeling and disclosure requirements to include information about a handset model's telecoil and Bluetooth coupling technology.²⁶² Accessibility Advocates argue, however, that we should modify our proposal to require the handset model's external package label and the related internal packaging material to indicate whether or *not* the handset model includes telecoil coupling capability that meets certification requirements.²⁶³ Similarly, Accessibility Advocates argue that we should modify our proposal to require the handset model's external package label and the related internal packaging material to indicate whether or *not* the model includes Bluetooth coupling technology as a replacement for meeting telecoil certification requirements or whether the handset model meets both telecoil and Bluetooth coupling requirements.²⁶⁴ Accessibility Advocates support our proposal that if we allow handset models to have a secondary hearing aid compatibility setting, the printed package insert or printed handset manual must provide an explanation of each of these settings, what each setting does and does not include, and how to turn these settings on and off.²⁶⁵ CTIA, however, states that we should reject calls to expand our labeling

²⁵⁷ Below we determine that the information that must be included inside a handset model's packaging, either in the form of a printed insert or a printed handset manual, can be provided to consumers using digital labeling technology as an alternative to the printed insert or printed handset manual as long as the company using digital labeling maintains a publicly accessible website where consumers can easily locate the required information. While we will allow the use of digital labeling with respect to the information that must be included inside a handset model's packaging, we will not allow digital labeling to be used to provide the information that must be included on the external printed package label.

²⁵⁸ 47 CFR § 20.19(f).

²⁵⁹ *100% HAC Notice* at 30, para. 102.

²⁶⁰ *Id.* at 30-31, para. 103.

²⁶¹ *Id.* at 31, para. 104.

²⁶² Accessibility Advocates Comments at 21; MWF Comments at 12.

²⁶³ Accessibility Advocates Comments at 21.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

requirements.²⁶⁶ CTIA argues that requiring additional, granular information creates additional burdens without consumer benefits, especially as the industry transitions to a 100% hearing aid compatibility requirement.²⁶⁷

94. Based on our tentative conclusion and the record, we revise our external printed package label requirements to incorporate our tentative conclusion with modifications to address Accessibility Advocates' comments. We require a handset model's external printed package label to provide: (1) that the handset model is certified as hearing aid compatible; (2) whether or not the handset model meets telecoil or Bluetooth coupling requirements or both requirements and, in the case of Bluetooth coupling requirements, which Bluetooth coupling standard the handset model includes; and (3) the handset model's actual conversational gain with and without hearing aids, if certified under the 2019 ANSI standard, with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band.²⁶⁸

95. Further, based on our tentative conclusion and the record, we revise the information that must be included inside a handset model's packaging, either in the form of a printed insert or a printed handset manual (or through the use of digital labeling, as discussed below), to include the following new information:

- (i) An explanation of what it means that the handset model is certified as hearing aid-compatible and which ANSI standard was used for certification purposes;
- (ii) An explanation of what acoustic, telecoil, and Bluetooth coupling are and which of these coupling capabilities the handset model includes and, in the case of Bluetooth coupling, which Bluetooth coupling standard the handset model includes;
- (iii) If the handset model was certified under the 2019 ANSI standard, an explanation of the handset model's volume control capabilities, an affirmative statement of the handset model's conversational gain with and without hearing aids, and an explanation of how to turn the handset model's volume control capabilities on and off;
- (iv) An explanation of how to turn each of the handset model's coupling functions on and off and an explanation that by default the handset model comes with its acoustic and volume control functions turned on;
- (v) If the handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. Under these circumstances, the included printed package insert or printed handset manual must include the following disclosure statement:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the handset manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

²⁶⁶ CTIA Reply at 15.

²⁶⁷ *Id.*

²⁶⁸ 47 CFR § 20.19(f)(1).

96. We find that these external and internal labeling and disclosure requirements are consistent with section 710(d) of the Communications Act, which directs the Commission to establish requirements for labeling “as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.”²⁶⁹ Our revised external printed package label rule ensures that the most pertinent handset model information appears on the handset model’s printed package label. Consumers can read the external package label and determine the coupling technology that the handset model includes and, if it includes Bluetooth coupling technology, which standard the handset model incorporates. In addition, for handset models certified as hearing aid-compatible under the 2019 ANSI Standard, consumers can easily ascertain the conversational gain that the handset model provides both with and without hearing aids. Consumers can use this information to determine whether a handset model meets their listening needs and to compare handset models when considering which handset model to purchase.²⁷⁰ We continue to allow handset manufacturers and service providers flexibility in designing their handset model printed package labels as long as the labels include the required information in a clear and straight-forward fashion that consumers can easily find and understand.

97. Our revised internal printed package insert or printed handset manual requirements allow consumers who are interested in more detailed information about a handset model’s hearing aid compatibility to find this additional information in the printed package insert or the printed handset manual—whichever the handset manufacturer or service provider chooses to include in the handset model’s packaging. Consumers can consult the included printed insert or printed handset manual to understand what type of coupling technology the handset model includes and how to turn these coupling functions on and off, and, if applicable, how to turn the volume control function on and off. In addition, consumers will be able to determine whether the handset model has been certified under special testing circumstances, what this means in terms of the handset model’s operations, and whether the handset model includes frequency bands or air interfaces that are not certified as hearing aid compatible.²⁷¹ As with our external printed package label requirements, we continue to require that printed inserts or printed handset manuals included inside a handset model’s packaging be written in a clear, straight-forward fashion using plain language that consumers can easily understand. We find all of these requirements to be consumer friendly and, therefore, in the public interest, and consistent with section 710(d) of the Communications Act.²⁷²

98. We disagree with CTIA concerning our revised external and internal package labeling content requirements.²⁷³ We find that these revised content requirements are consistent with section 710(d) of the Communications Act, which requires the Commission to establish requirements for labeling “as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.”²⁷⁴ The information that we are requiring handset manufacturers and service providers to provide to consumers allows consumers to be fully informed about a handset model’s functions and capabilities and to make informed purchasing decisions. Further, we disagree with CTIA’s statement that “[c]onsumers today do not shop for modern phones by picking up boxes in the store”²⁷⁵ The HAC

²⁶⁹ 47 U.S.C. § 610(d).

²⁷⁰ 2021 HAC Order, 36 FCC Rcd at 4581, paras. 34-35.

²⁷¹ Examples of special testing circumstances include handset models certified under the 2019 ANSI Standard using the volume control waiver standard or handset models that do not meet full volume control certification requirements in telecoil coupling mode.

²⁷² 47 U.S.C. § 610(d).

²⁷³ CTIA Reply at 15.

²⁷⁴ 47 U.S.C. § 610(d).

²⁷⁵ CTIA Reply at 13.

Task Force specifically states that one of the ways consumers can learn about the hearing aid compatibility of a handset model is to look at the handset's packaging.²⁷⁶ While we require handset manufacturers to provide hearing aid compatibility information about their handset models through other means too, it is reasonable to assume that consumers might read the information provided on a handset model's external printed package label and to compare this information with the information on a competing handset model's external printed package label. Our labeling requirements allow us to ensure that consumers have adequate information about the hearing aid compatibility of the handset models they are considering for purchase.

99. We decide, however, to eliminate one current requirement from our printed package insert or printed handset manual requirements. We will no longer require the printed package insert or the printed handset manual to provide the M/T ratings of handset models certified under the 2011 ANSI Standard or older ANSI standards or to provide an explanation of the ANSI M/T rating system.²⁷⁷ The 2019 ANSI Standard does not use the M/T rating system that older versions of the ANSI standard used.²⁷⁸ Under the 2019 ANSI Standard handset models are certified without an assigned rating. Currently, the 2019 ANSI Standard is the exclusive testing standard for determining hearing aid compatibility.²⁷⁹ As a result, we find the M/T rating requirements to be outdated and unnecessary, given the fact that all new handset models must be compliant with the 2019 ANSI Standard. We are concerned that continuing to require this outdated information to be included in printed package inserts or printed handset manuals will confuse consumers. We eliminate this requirement as handset manufacturers continue to certify handset models under the 2019 ANSI Standard.²⁸⁰ By doing so, we reduce regulatory burden on handset manufacturers and service providers and avoid confusing consumers with outdated and unnecessary information.

100. *Transition Period for Revised Labeling and Disclosure Requirements.* As requested by CTIA, in order to align the effective date of the revised labeling requirements with the start of the handset manufacturer's 100% hearing aid compatibility requirement, we will make the effective date of our revised labeling requirements the later of either the date the Commission publishes a notice in the Federal Register announcing that the Office of Management and Budget (OMB) has concluded its review of these requirements or the effective date of the handset manufacturer 100% hearing aid compatibility requirement.²⁸¹ We take this step to reduce regulatory burden and consumer confusion. The handset manufacturer 100% hearing aid compatibility requirement will be effective 25 months after a summary of this Report and Order is published in the Federal Register. This delayed effective date relates only to the revised rules that will be in sections 20.19(f)(1) and (2) of the Commission's rules and does not apply to the effective date of the other revised paperwork requirements requiring OMB review. These other revised paperwork requirements include the new digital labeling requirements in section 20.19(f)(3) of the Commission's rules. The digital labeling requirements will become effective with the rest of the

²⁷⁶ HAC Task Force Final Report at 7.

²⁷⁷ 47 CFR § 20.19(f)(2).

²⁷⁸ Older versions of the ANSI standard rated hearing aid compatibility based on a scale of M1 to M4 for acoustic coupling, where M3 is passing, and on a scale of T1 to T4 for inductive coupling, where T3 is passing. 47 CFR § 20.19(b)(1)(2); *see generally* Accredited Standards Committee C63® – Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2011 (May 27, 2011) (2011 ANSI Standard). The 2019 ANSI Standard no longer uses this dual rating system and applies a single set of requirements to test for hearing aid compatibility. *See 2021 HAC Order*, 36 FCC Rcd at 4571, para. 10.

²⁷⁹ *HAC Extension Order*, 38 FCC Rcd at 3400-1, 3405, paras. 1, 10.

²⁸⁰ *See* Accessibility Advocates Comments at 25.

²⁸¹ CTIA Ex Parte Letter at 4; *see also* CTIA 2nd Ex Parte Letter at 4.

paperwork requirements (other than sections 20.19(f)(1) and (2)) once the Commission publishes a notice in the Federal Register announcing OMB has completed its review of these requirements.

2. Use of Digital Labeling Technology

101. We will continue to require the use of external printed package labels, but will allow the handset model information that must be included inside a handset model's packaging to be delivered using digital labeling technology as an alternative to including either a printed insert or printed handset manual as long as the company using this option maintains a publicly accessible website where consumers can easily locate the required information.²⁸² Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-Response (QR) code and the related website address where the required handset model information can be found. The required information must be presented in a straight-forward fashion using plain language that is easy for consumers to understand. Handset manufacturers and service providers choosing this option must update the required information within 30 days of any relevant changes, and they must ensure that they are in full compliance with our website posting requirements.

102. As discussed above, section 20.19(f) of the Commission's rules requires the use of an external printed package label and either an internal printed insert or printed handset manual.²⁸³ In the *100% HAC Notice*, we sought comment on whether we should permit handset manufacturers and service providers to use digital labeling technology, such as QR codes, as an alternative to external printed package labels and internal printed inserts or printed handset manuals.²⁸⁴ We noted that the Commission previously considered whether to allow the use of websites as an alternative to printed materials, but decided not to adopt this approach because consumers may not necessarily visit a handset manufacturer's or service provider's website before purchasing a handset.²⁸⁵ In the *100% HAC Notice*, we proposed to reconsider this decision and allow handset manufacturers and service providers to meet the information requirements of section 20.19(f) through the use of digital labeling technology.²⁸⁶

103. *External Printed Package Labels.* After considering the record in this proceeding, we continue to require handset manufacturers and service providers to use external printed package labels to deliver the handset model information that we require to be on external package labels. Accessibility Advocates agree with this decision.²⁸⁷ As we discussed above, we require the most important handset model information to be on external printed package labels. This approach allows consumers with hearing loss to pick-up a handset model in its original packaging and read its external label. This label will allow consumers to easily ascertain whether a handset model they are considering for purchase will meet their listening needs and to easily compare the hearing aid compatibility features of one handset model with another handset model by reading the information required to be on the external labels. We

²⁸² See *supra* note 12 (defining digital labeling technology as referring to Quick-Response (QR) codes and the related website addresses that link to additional online information about a handset model's hearing aid compatibility).

²⁸³ 47 CFR § 20.19(f); see also *2021 HAC Order*, 36 FCC Rcd at 4581, 4584, paras. 35, 42.

²⁸⁴ *100% HAC Notice* at 31, para. 105. A QR code is a type of barcode that can be read easily by a digital device, such as a handset with a camera, and is typically used for storing Uniform Resource Locator (URL) information. Companies often use QR codes to link consumers to a company's webpage in order to provide consumers with additional information on a company product. See Academy, *What Are QR Codes and How Do You Scan Them*, [https://www.avast.com/c-what-is-qr-code-how-to-scan#:~:text=A%20QR%20code%20\(short%20for,to%20store%20and%20access%20data](https://www.avast.com/c-what-is-qr-code-how-to-scan#:~:text=A%20QR%20code%20(short%20for,to%20store%20and%20access%20data). (last visited Oct. 10, 2024).

²⁸⁵ *100% HAC Notice* at 31, para. 106; see also *2021 HAC Order*, 36 FCC Rcd at 4584, para. 42.

²⁸⁶ *100% HAC Notice* at 31, para. 107.

²⁸⁷ Accessibility Advocates Comments at 23.

continue to believe that requiring an external printed package label serves the interest of consumers. We, therefore, will continue to require the use of external printed package labels to deliver the handset model information that we require to be on a handset model's external package label. We will not allow handset manufacturers and service providers to deliver this information to consumers using digital labeling technology.

104. *Internal Packaging Information.* While we require the continued use of external printed package labels, we will allow handset manufacturers and service providers to use digital labeling technology to deliver to consumers the information that would otherwise have to be provided using a printed insert or printed handset manual, as long as companies utilizing this approach maintain publicly accessible websites where consumers can easily find the information required by our rules. The information that handset manufacturers and service providers can provide to consumers using digital labeling technology is the same information that they would otherwise have to deliver to consumers using printed package inserts or printed handset manuals.²⁸⁸ Handset manufacturers and service providers choosing this option must provide consumers with both a QR code and the related website address where the required information can be found. We require both a QR code and the related website address in order to ensure that consumers who may not be comfortable using QR codes have another way to access the on-line information. In addition to providing this information using QR codes and website addresses, handset manufacturers and service providers choosing to use this option must comply with all of our other website posting requirements.²⁸⁹ Further, they must ensure that consumers can easily find the required information and that the required information is presented in a clear, straight-forward fashion using plain language that consumers can easily understand.

105. When the Commission previously determined not to allow the use of digital labeling technology, the Commission based its decision on finding that consumers may not necessarily visit the websites of handset manufacturers or service providers before going to the company's store and purchasing a hearing aid-compatible handset.²⁹⁰ We find today, however, that digital labeling is ubiquitous and can be found on many consumer products, including electronic products.²⁹¹ Further, the use of digital labeling technology allows consumers to visit a company's publicly accessible website and access the required information at the point-of-sale while consumers are in stores making purchasing decisions. We agree with commenters that consumers are now more familiar with digital labeling and accessing a company's website using their handsets.²⁹² QR codes are easy to use and merely require hovering a handset's camera over the QR code and tapping the website that appears or, under our digital labeling rule, consumers can type the required website link into their handset's web browser.²⁹³

106. We agree with the commenters who state that digital labeling is a more consumer friendly way to deliver the information that is required to be included in a printed insert or printed handset manual.²⁹⁴ Digital labeling allows consumers to get up-to-date product information and embedded website links can be used to provide additional information or to define terms. For instance, companies can use embedded links to define terms such as "air interface," "ANSI standards," "codecs,"

²⁸⁸ 47 CFR § 20.19(f)(2); *see also* Appendix B, Final Rules, section 20.19(f)(2).

²⁸⁹ 47 CFR § 20.19(h); *see also* Appendix B, Final Rules, section 20.19(h).

²⁹⁰ 2021 HAC Order, 36 FCC Rcd at 4584, para. 42.

²⁹¹ MWF Comments at 7; *see also* Letter from Chuck Eger, MWF Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 23-388, at 1 (filed July 31, 2024) (QR codes have become ubiquitous).

²⁹² CTA Comments at 7; CTIA Comments at 15-16; CTA Reply at 4; MWF Reply at 7.

²⁹³ CTIA Comments at 15; Samsung Comments at 14; CTA Reply at 3 (nine out of ten consumer survey respondents indicated that they own smartphones).

²⁹⁴ CTA Reply at 5.

“conversational gain,” “frequency bands,” and values such as “MHz/GHz,” and “dBm.”²⁹⁵ By using embedded links to define legal and technical terms and to provide additional information, handset manufacturers and service providers can use plain and clear language to meet their disclosure requirements.²⁹⁶ In addition, digital labeling allows consumers to use the accessibility features on their handsets to review hearing aid compatibility information.²⁹⁷ Printed package inserts and printed handset manuals tend to be small, use tiny print, and be difficult to read. Allowing the use of digital labeling will allow consumers, especially older consumers, to use their handsets to enlarge the print online. Further, consumers often throw away or misplace package inserts and handset manuals, and are used to using a company’s website to look up information when necessary.²⁹⁸

107. Accessibility Advocates caution the Commission that older people may not be comfortable or familiar with using QR codes, and that it is concerned that if QR codes are the only means of acquiring information that some people will not be able to independently access needed information.²⁹⁹ We find, however, that just as consumers are familiar with Bluetooth coupling as they age into hearing loss they will also be familiar with QR codes and searching handset manufacturers’ and service providers’ publicly accessible websites for handset model hearing aid compatibility information. Further, we find that digital labeling will help senior citizens who might find the size and print of printed inserts and printed handset manuals difficult to read. Senior citizens will be able to use their handsets to enlarge print to make it easier to read, or they could use the type-to-speech function of their handsets to have the information read to them.³⁰⁰ To the extent that a senior citizen or a consumer has difficulty using digital labeling or does not possess a smartphone, a store employee at the point-of-sale can help the senior citizen or the consumer with the process. Alternatively, senior citizens or consumers can directly contact handset manufacturers or service providers using our new point-of-contact information to have their hearing aid compatibility questions answered. This new contact information requirement includes a texting option that Accessibility Advocates requested that we adopt to help ensure that those who may have difficulty hearing a phone conversation can contact a company by texting the company.³⁰¹ We find, therefore, that electronic labeling will help consumers access handset model hearing aid compatibility information, and

²⁹⁵ Samsung Comments at 13-14.

²⁹⁶ Accessibility Advocates Comments at 22; CTA Comments at 7-8; MWF Comments at 12; Samsung Comments at 13-14; CTIA Reply at 14.

²⁹⁷ CTA Comments at 7; CTIA Comments at 4, 15; MWF Comments at 12-13; Samsung Comments at 12, 13-14; CTA Reply at 2, 4, 8.

²⁹⁸ CTA Reply at 3.

²⁹⁹ See Accessibility Advocates Comments at 23.

³⁰⁰ E labelling initiative, Greater Accessibility at <https://www.elabellinginitiative.org/accessibility.cfm> (last visited Oct. 10, 2024) (“E-labelling helps to overcome these limitations [of paper] by (1) allowing all the relevant information to be displayed within the device for all markets; (2) not having the space restrictions that come with printed labels and information; (3) allows for text-to-speech or other accessibility features to be able to read out the information just like with any other text; and (4) allows labels and text to be resized in accordance with a user’s needs.”).

³⁰¹ We also note that service providers who abided by the CTIA Consumer Code for Wireless Service have committed to providing ready access to customer service. CTIA, Wireless Industry Commitment, *Consumer Code for Wireless Service at Section 8, Provide Ready Access To Customer Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Oct. 10, 2024). In addition, consumers, including senior citizens, may contact the FCC’s Disability Rights Office with questions concerning the Commission’s hearing aid compatibility requirements. The Office’s contact information can be found here: <https://www.fcc.gov/accessibility>. The Office has also prepared a consumer guide on Hearing Aid Compatibility for Wireline and Wireless Telephones that can be found here: <https://www.fcc.gov/consumers/guides/hearing-aid-compatibility-wireline-and-wireless-telephones>.

that we are providing multiply ways for consumers to access handset model hearing aid compatibility information.

108. Our decision to allow the use of digital labeling as an alternative to printed inserts or printed handset manuals is consistent with our revised website posting requirements. Consumers can go to handset manufacturers' and service providers' publicly accessible websites to find hearing aid compatibility information about each handset model that these companies offer for sale or use in the United States.³⁰² Further, digital labeling is less burdensome on handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, making it a more environmentally friendly way of providing information.³⁰³ We will not require handset manufacturers and service providers who choose to use this digital labeling option to also continue to include a printed insert or printed handset manual within the handset model's packaging.³⁰⁴ Such an approach would be duplicative and would undercut our findings concerning the benefits of allowing digital labeling to be used to deliver the information required to be included within a handset model's packaging. We remind handset manufacturers and service providers, however, that our rules require these companies to ensure access to information and documentation it provides to its customers, if readily achievable.³⁰⁵ Our rules also require handset manufacturers to provide end-user product documentation, including accessibility and compatibility information, in alternate formats or alternate modes upon request at no additional charge, if readily achievable.³⁰⁶ We also encourage handset manufacturers and service providers who use digital labeling to provide the required information in languages in addition to English, such as Spanish.

3. Handset Model Number Designation Requirements

109. We determine that in cases where a handset manufacturer or service provider recertifies a handset model using an updated certification standard, the company does not need to assign the handset model a new model number designation, unless the handset model has been physically altered to meet the requirements of the new standard. Currently, section 20.19(g) of the Commission's rules provides that "[w]here a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under the 2011 ANSI standard or an earlier version of the standard, the altered handset must be given a model designation distinct from that of the handset prior to its alteration."³⁰⁷ The *100% HAC Notice* sought comment on how this rule should apply in cases where a handset model that has passed the 2011 ANSI Standard and has an assigned model number subsequently passes the 2019 ANSI Standard.³⁰⁸ MWF, the only party to comment on this issue, states that handset models that are recertified under updated certification standards should not be required to have a new model number as long as there is no physical change to the handset model.³⁰⁹ Instead, MWF states that consumers can be notified of this certification change by updating the handset model's labeling, and that it is not necessary to also update the handset model number designation.³¹⁰

110. We agree with MWF that, unless the handset model is physically altered to meet the updated certification standard, there is no need to give the recertified handset model a new model number

³⁰² Samsung Comments at 12-13; CTA Reply at 2; CTIA Reply at 15.

³⁰³ Samsung Comments at 12, 14.

³⁰⁴ Accessibility Advocates Comments at 23.

³⁰⁵ 47 CFR § 6.11(a).

³⁰⁶ *Id.* § 6.11(a)(1)-(2).

³⁰⁷ *Id.* § 20.19(g).

³⁰⁸ *100% HAC Notice* at 32, paras. 110-111.

³⁰⁹ MWF Comments at 14.

³¹⁰ *Id.*

designation. Consistent with established Commission precedent, we will continue to define a physical change to a handset model to be a change in the handset model's hardware or software that causes a variation in the form, features, or capabilities of the handset model.³¹¹ As long as the handset manufacturer or service provider does not physically alter the handset model through a hardware or software change that causes a variation in the form, features, or capabilities of the handset model, the handset manufacturer or service provider does not need to assign the handset model a new model number designation. While we will not require the handset model to be assigned a new model number designation, we do require that the handset manufacturer or the service provider update the handset model's labeling, disclosures, and website posting information to reflect the handset model's updated certification and to explain how this updated certification affects the handset model's operations. We agree with MWF that our consumer notification provisions are sufficient under these circumstances to notify consumers of the certification change and that there is no need to also assign the handset model a new model number designation.

111. While handset manufacturers and service providers do not have to assign unaltered handset models new model number designations, they may assign handset models new designation numbers if they choose to for business reasons. We are aware that handset manufacturers and service providers sometimes assign handset models different model number designations to distinguish units sold to different service providers, or for other reasons that are not related to the handset model's form, features, or capabilities.³¹² If, under these circumstances, a handset manufacturer or a service provider chooses for its own business reasons to assign a handset model multiple model number designations, the company may only count the handset model once for purposes of our handset model deployment benchmarks. As the Commission has previously found, "for purposes of the hearing aid compatibility rules, a manufacturer may not characterize as separate models any devices that do not in fact possess any distinguishing variation in form, features, or capabilities."³¹³ As a result, unless the handset models are distinguishable in form, features, or capabilities, the handset model can only be counted once for purposes of our handset model deployment benchmarks.

112. While we allow hearing aid-compatible handset models to be recertified under updated certification standards, we note that handset models may not be certified as hearing aid-compatible using parts of two different ANSI standards.³¹⁴ A handset model must meet all aspects of the updated certification standard in order to be certified as hearing aid-compatible under the updated standard. We also note that hearing aid-compatible handset models cannot be modified through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards.³¹⁵ Consumers purchase hearing aid-compatible handset models with the understanding that the handset model meets certain hearing aid compatibility certification standards, and handset manufacturers and service providers may not modify handset models through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards after the software push is installed. We also emphasize that if a software push adds operations or frequency bands that are not covered by the applicable ANSI standard and, therefore, these new operations or frequency bands do not meet hearing aid compatibility certification standards, handset manufacturers and service providers must inform consumers of this fact before they choose to update their handset model's software.

113. Finally, handset manufacturers and service providers may not lower a handset model's conversational gain through a software push, subject to a *de minimis* exception as described below. Just

³¹¹ 47 CFR § 20.19(a) (definition of a handset model); *2008 HAC Order*, 23 FCC Rcd at 3428, para. 55.

³¹² 47 CFR § 20.19(a) (definition of a handset model).

³¹³ *2008 HAC Order*, 23 FCC Rcd at 3427, para. 55.

³¹⁴ 47 CFR § 2.947(b); *2021 HAC Order*, 36 FCC Rcd at 4577, para. 26.

³¹⁵ 47 CFR § 20.19(b)(3), (b)(4).

as consumers purchase hearing aid-compatible handset models with the expectation that the handsets meet certain certification standards, consumers purchase handsets with the understanding that the handsets provide a certain level of conversational gain.³¹⁶ This expectation may be especially true for consumers with hearing loss who do not use hearing aids. CTIA suggests that the Commission should allow software pushes that lower a handset model's conversational gain in ways that are "immaterial" or "imperceptible."³¹⁷ CTIA, however, does not define or explain what handset manufacturers or service providers might consider as an immaterial or imperceptible reduction in a handset model's conversational gain or whether such a reduction would be permissible under the Commission's permissive change rules.³¹⁸ In addition, Accessibility Advocacy and Research Organizations "oppose any changes that would allow software updates to alter the model's HAC rating, certification, or capability."³¹⁹ We are concerned that perceptibly lowering the conversational gain of handset models through software pushes could frustrate the expectations of consumers who may have purchased a specific handset model because it provides a certain level of conversational gain, including representations of that level on the handset model's printed external package label or representations of that level on a handset manufacturer's or service provider's publicly accessible website. At the same time, we recognize CTIA's concerns that there may be necessary software pushes that have a minimal impact on volume control.³²⁰ Given these facts, we conclude that our rule should prohibit handset manufacturers or service providers from lowering a handset model's conversational gain through a software push, except for software pushes that would have a *de minimis* impact on the handset model's conversational gain. We seek to minimize the impact on consumers with hearing loss while also avoiding unnecessary impacts on the flexibility of manufacturers and service providers to deploy software updates. We will closely monitor the experiences of consumers, manufacturers, and service providers in implementing this rule.

114. We delegate authority to WTB, in coordination with the Office of Engineering and Technology, to further define the scope of the *de minimis* exception as needed, including through modifications to the rule after notice and comment.

I. Website Posting, Record Retention, and Reporting Requirements

1. Website Posting and Record Retention Requirements

115. We revise our website posting and record retention requirements to ensure handset manufacturer and service provider compliance with our 100% hearing aid compatibility requirement and to ensure that consumers have access to the information that they need to make informed purchasing decisions. Section 20.19(h) of the Commission's rules requires handset manufacturers and service providers to post on their publicly accessible websites certain information and to maintain certain records related to the handset models that they offer.³²¹ In the *100% HAC Notice*, we tentatively concluded that

³¹⁶ See 47 CFR § 20.19(f)(1) (handset manufacturers and service providers must place on a handset model's package label the handset model's actual conversational gain with and without hearing aid if the handset model is certified using a technical standard with volume control requirements); *HAC Waiver Order* at 12, para. 32 (reiterating that a handset model's package label must specify the handset model's conversational gain with and without hearing aids, if the handset model is certified using a technical standard with volume control requirements).

³¹⁷ CTIA Ex Parte Letter at 5; see also CTIA 2nd Ex Parte Letter at 5.

³¹⁸ See 47 CFR § 2.1043 (certain changes in certified equipment require the equipment to be recertified).

³¹⁹ Accessibility Advocates Ex Parte Letter at 3.

³²⁰ CTIA Ex Parte Letter at 5; see also CTIA 2nd Ex Parte Letter at 5.

³²¹ 47 CFR § 20.19(h) (listing website posting requirements for handset manufacturers and service providers who operate publicly accessible websites); see also *2008 HAC Order*, 23 FCC Rcd at 3446, 3448, 3450, paras. 100, 109, 112 (establishing website posting requirements for handset manufacturers and service providers that maintain public websites); *2018 HAC Order*, 33 FCC Rcd at 11554 & n.36, 11555, 11557, paras. 12 & n.36, 17, 22 (adopting revised website posting requirements for consumer facing websites).

we should revise these requirements to require handset manufacturers and service providers to identify on their publicly accessible websites those handset models in their handset model portfolios that meet telecoil certification requirements.³²² For those handset models that do not meet telecoil certification requirements, we tentatively concluded that handset manufacturers and service providers must affirmatively state that the handset model does not meet telecoil certification requirements and identify which Bluetooth coupling technology the handset model meets instead.³²³ We also tentatively concluded that handset manufacturers and service providers must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model that they offer that was certified under the 2019 ANSI Standard.³²⁴ In addition to seeking comment on these revisions to our website posting requirements, we sought comment on ways to streamline our website posting and record retention requirements.³²⁵

116. After reviewing the record, we update and streamline our existing website posting requirements by adopting our tentative conclusions. As a result, once the applicable 100% hearing aid compatibility transition period passes, handset manufacturers and service providers are required to provide the following information on their publicly accessible websites: (1) a list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number,³²⁶ along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and (6) a link to the Commission's wireless hearing aid compatibility web page.³²⁷

117. All of this information must be easy for consumers to locate on handset manufacturers' and service providers' publicly accessible websites and not hidden behind hard to locate links. Further, this information must be presented to consumers using plain straightforward language that consumers can easily understand. We also require handset manufacturers and service providers who choose to utilize digital labeling technology as an alternative to printed package inserts or printed handset manuals to post the information that is required to be included within a handset model's packaging on their publicly accessible websites, as discussed above. Further, handset manufacturers and service providers must post on their publicly accessible websites the company point-of-contact information that we adopt below. The digital labeling information and company point-of-contact information must be presented to consumers in the same fashion as we require other website posting information to be presented to consumers. This

³²² 100% HAC Notice at 32, para. 112.

³²³ *Id.*

³²⁴ *Id.* at 32-33, para. 112; *see also* 47 CFR § 20.19(f)(1).

³²⁵ 100% HAC Notice at 33, para. 114.

³²⁶ The information that handset manufacturers and service providers post to their publicly accessible websites concerning marketing model name or number and FCC ID number must be accurate. Commission staff will use this information to access the grant note, testing reports, and Bluetooth certification for any handset model staff has questions about. Staff will use this information to verify compliance with the handset model deployment benchmarks.

³²⁷ *See* FCC, *Hearing Aid Compatible Mobile Handsets*, <https://www.fcc.gov/hearing-aid-compatibility-wireless-telephones> (last updated Oct. 1, 2024).

information must be easy for consumers to locate and displayed in an easy to understand straightforward manner using plain language, and we encourage handset manufacturers and service providers to provide this information in languages in addition to English, such as Spanish. Consistent with current website posting requirements, handset manufacturers and service providers must update their websites within 30 days of any relevant changes, and date stamp their website pages. This date stamp requirement allows consumers to see how current the information is that they are viewing.³²⁸

118. Along with the revisions to our website posting requirements, we eliminate the following website posting requirements: (1) handset manufacturers and service providers will no longer be required to list a handset model's M/T ratings for handset models certified using the 2011 ANSI Standard or older ANSI standards or provide an explanation of the M/T rating system; (2) service providers will no longer be required to post a list of all the non-hearing aid-compatible handset models that they offer, including the marketing model name/number(s) and FCC ID number, or a list of all hearing aid-compatible handset models that they offered in the past 24 months but no longer offer; and (3) service providers will no longer be required to post a link to a third-party web site as designated by the Commission or the Wireless Telecommunications Bureau, with information regarding hearing aid-compatible and non-hearing aid-compatible handset models.

119. Additionally, we eliminate our record retention requirement that requires service providers to retain certain information about handset models they no longer offer for sale or use in the United States.³²⁹ Specifically, we will no longer require service providers to retain internal records for discontinued handset models, and the associated information that they presently have to make available to the Commission upon request. This handset model information includes: (1) the month/year each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and (2) the month/year each hearing aid-compatible and non-hearing aid-compatible handset model was last offered for all discontinued handset models until a period of 24 months has passed from that date.³³⁰ The Commission adopted these requirements to ensure that "service providers meet numerical and percentage-based handset deployment obligations."³³¹ Under our 100% hearing aid compatibility requirement, however, removing a handset model from a service provider's handset model portfolio will not impact the service provider's compliance with the 100% handset model deployment benchmark the way it might with respect to the current 85% benchmark. All of the remaining handset models will be hearing aid-compatible and to the extent there is an issue with the telecoil and Bluetooth coupling requirement, Commission staff can review the FCC ID numbers of the remaining handset models to ensure compliance with these requirements.³³² Further, as the Commission has previously stated, the date that a handset model is first offered and the date that it is discontinued is the type of information that service providers would retain as part of normal businesses operations independent of the Commission's requirements.³³³

120. We find that these revisions and modifications to our website posting and record retention requirements reduce regulatory burden while ensuring that consumers have access to the information that they need to make informed handset model purchasing decisions. We are updating our website posting requirements to reflect the certification requirements of the 2019 ANSI Standard and our new Bluetooth coupling requirement. Consumers will be able to consult a handset manufacturer's or service provider's publicly accessible website and learn which handset models that they offer include telecoil connectivity and which do not; which ones include Bluetooth coupling technology and which do

³²⁸ 47 CFR § 20.19(h)(4).

³²⁹ *Id.* § 20.19(h)(5).

³³⁰ *Id.*

³³¹ 2018 HAC Order, 33 FCC Rcd at 11556, para. 20.

³³² See *supra* note 327.

³³³ 2018 HAC Order, 33 FCC Rcd at 11557, para. 21.

not; and for those that do include Bluetooth coupling technology, the type of Bluetooth coupling technology that is included. Consumers will also be able to review the conversational gain that handset models certified under the 2019 ANSI Standard offer. In addition, consumers will be able to use company point-of-contact information posted on handset manufacturers' and service providers' publicly accessible websites to contact these companies directly about the hearing aid compatibility of the handset models that they offer. Further, our revisions ensure that handset manufacturers and service providers only have to post pertinent information and not outdated information.³³⁴

121. We eliminate the posting and record retention requirements related to non-hearing aid-compatible handset models, as well as information about handset models that are no longer offered. Since all handset models will be hearing aid-compatible, the website posting and record retention requirements related to non-hearing aid-compatible handset models will no longer be relevant. Going forward, the Commission will be able to review a handset manufacturer's or a service provider's publicly accessible website to determine whether a company is currently in compliance with our handset model deployment benchmarks. The Commission will also be able to rely on the annual certifications that handset manufacturers and service providers will be filing to ensure compliance with our hearing aid compatibility rules for the previous calendar year. To the extent that consumers have questions about handset models that are no longer offered, they can use the handset manufacturer and service provider point-of-contact information to contact these companies to have their questions answered. Our website posting and record retention revisions ensure that consumers have the relevant information that they need to make informed purchasing decisions while also streamlining these requirements to reduce regulatory burden and cost on handset manufacturers and service providers.

2. FCC Forms 655 and 855 Annual Reporting and Certification Requirements

122. After the handset manufacturer 100% hearing aid compatibility transition period ends, we will eliminate FCC Form 655 that handset manufacturers currently must file for reporting purposes and instead require handset manufacturers to file FCC Form 855 annually for compliance purposes. FCC Form 655 is the form handset manufacturers file containing information about the hearing aid compatibility status of each handset model offered, functionalities and labeling of hearing-aid compatible handsets, and the filing company's consumer outreach efforts. FCC Form 855 is the form that service providers presently file to certify compliance with our hearing aid compatibility requirements, and we will require service providers to continue to file this form after the relevant 100% hearing aid compatibility transition period ends. Further, after the expiration of the manufacturer 100% hearing aid compatibility transition period, we will change the reporting deadline for handset manufacturers from July 31 each year to January 31 each year and change the handset manufacturer reporting period to cover the period of January 1 to December 31 of the previously calendar year, instead of the current period of July 1 of the previous year to June 30 of the current year. These changes will align the reporting deadline and reporting period for handset manufacturers with the reporting deadline and reporting period for service providers. We will also update FCC Form 855 to reflect our 100% hearing aid compatibility requirement and related requirements.

123. In the *100% HAC Notice*, we sought comment on our tentative conclusions to move handset manufacturers from FCC Form 655 to FCC Form 855 after the passing of the handset manufacturer 100% hearing aid compatibility transition period and to align the filing deadline and reporting period for handset manufacturers with the filing deadline and reporting period used for service providers.³³⁵ We noted that section 20.19(i) of the Commission's rules requires handset manufacturers to file FCC Form 655 reports each year³³⁶ and service providers to file FCC Form 855 certifications each

³³⁴ See Accessibility Advocates Comments at 25.

³³⁵ *100% HAC Notice* at 34, para. 118.

³³⁶ 47 CFR § 20.19(i)(1). FCC Form 655 provides that certain manufacturers of wireless handsets are required to annually file a FCC Form 655 status report indicating their compliance with the Commission's hearing aid

(continued....)

year to demonstrate compliance with the Commission's hearing aid compatibility requirements.³³⁷ The *100% HAC Notice* set forth the information that each form collects and summarized the information that handset manufacturers and service providers must provide to the Commission in order to demonstrate compliance with our hearing aid compatibility rules.³³⁸ With respect to FCC Form 855, we specifically noted that our rules require a knowledgeable executive of the service provider to sign the form and to certify under penalty of perjury the service provider's compliance with the Commission's hearing aid compatibility requirements for the relevant reporting period.

124. Further, in the *100% HAC Notice*, we noted that prior to the *2018 HAC Order* the Commission required service providers to demonstrate compliance with the Commission's hearing aid compatibility rules by filing FCC Form 655, but in order to reduce regulatory burden on service providers the Commission moved service providers to FCC Form 855.³³⁹ We further noted that the Commission stated in the *2018 HAC Order* that this action would streamline "the Commission's collection of information while continuing to fulfill the underlying purposes of the current reporting regime."³⁴⁰ Finally, we noted that in the *2018 HAC Order* the Commission stated that it might take further steps to reduce regulatory burden, including modify the reporting rules, if it determined to adopt a 100% hearing aid compatibility requirement.³⁴¹

125. Commenters support moving handset manufacturers from FCC Form 655 to FCC Form 855 for reporting purposes.³⁴² We agree with these commenters and find that moving handset manufacturers from FCC Form 655 to FCC Form 855 after the manufacturer 100% hearing aid compatibility transition period ends will eliminate unnecessary regulatory burden. With the expiration of the handset manufacturer 100% hearing aid compatibility transition period, it will no longer be necessary to collect the detailed handset model information that FCC Form 655 collects.³⁴³ Under our revised website posting requirements, handset manufacturers will be required to post on their publicly accessible websites all relevant handset model information for the handset models that they offer for sale or use in the United States. Further, the handset model information that FCC Form 655 collects can be found in the Commission's Equipment Authorization System.³⁴⁴

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compatibility requirements. Specifically, this reporting requirement applies to manufacturers of wireless handsets used in the delivery of digital mobile service in the United States to the extent that the handsets offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 698 MHz to 6 GHz bands. *See id.* § 20.19(a)(2).

³³⁷ 47 CFR § 20.19(i)(1). FCC Form 855 provides that certain digital mobile service providers, including mobile virtual network operators ("MVNOs") and resellers, are required to annually file a FCC Form 855 certification with the Commission stating whether or not they are in full compliance with the Commission's hearing aid compatibility rules. Specifically, this certification requirement applies to "providers of digital mobile service in the United States to the extent that they offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 614 MHz to 6 GHz bands." *See id.* § 20.19(a).

³³⁸ *100% HAC Notice* at 34-35, paras. 119-120.

³³⁹ *Id.* at 35, para. 121.

³⁴⁰ *Id.*

³⁴¹ *100% HAC Notice* at 35, para. 122.

³⁴² Accessibility Advocates Comments at 26; CTIA Comments at 4, 16; Samsung Comments at 15; CTIA Reply at 15-16.

³⁴³ CTIA Comments at 4, 16; CTIA Reply at 15.

³⁴⁴ Samsung Comments at 15.

126. We find that moving handset manufacturers to the streamlined FCC Form 855 will reduce regulatory burden and cost. The Commission estimates that it takes 30 minutes to complete FCC Form 855 as compared to two and half hours to complete FCC Form 655.³⁴⁵ Therefore, contrary to CTIA's assertion, moving handset manufacturers to FCC Form 855 will reduce regulatory burden for handset manufacturers and not increase regulatory burden for service providers.³⁴⁶ As discussed below, we will revise FCC Form 855 to reflect the 100% hearing aid compatibility requirement and to streamline the information that the form will collect and to remove outdated questions. The revised form will only collect information that is necessary to ensure handset manufacturers' and service providers' compliance with our hearing aid compatibility rules. In this regard, FCC Form 855 will continue to require a knowledgeable company executive to certify under penalty of perjury that the company on whose behalf the executive is filing is in full compliance with all of the Commission's hearing aid compatibility rules, including handset model deployment benchmarks, labeling and disclosure requirements, as well as website posting requirements.³⁴⁷ The Commission can rely on these certifications for enforcement purposes, if the need arises.

127. Accessibility Advocates argue that if the Commission moves handset manufacturers to FCC Form 855, the Commission should require handset manufacturers to post their handset model information on their publicly accessible webpages in order to ensure handset manufacturers are in compliance with the Commission's handset model deployment benchmarks.³⁴⁸ We agree with Accessibility Advocates and, as discussed above, we are revising our website posting requirements to include this requirement. We will be able to review a handset manufacturer's publicly accessible website and determine if the manufacturer is in compliance with our handset model deployment benchmarks and coupling requirements. We will also be able to review these postings to ensure handset manufacturer compliance with the 85/15% split between telecoil and Bluetooth coupling and, if Bluetooth coupling technology is included in a handset model, what kind of Bluetooth coupling technology is included. Accessibility Advocates acknowledge that our revised website posting and certification requirements address their concerns.³⁴⁹

128. Further, we note that we continue to require handset manufacturers, as well as service providers, to update their webpages within 30 days of any relevant changes and to date stamp their webpages with the date of the update. As Accessibility Advocates observe, these requirements will ensure that the information that is displayed is current.³⁵⁰ Finally, we note that the Commission is adopting a new company point-of-contact requirement below that will allow consumers to directly contact handset manufacturers and service providers to ask questions about the hearing aid compatibility of the handset models that these companies offer for sale or use in the United States.

129. As part of our decision to move handset manufacturers to FCC Form 855 after the handset manufacturer's 100% hearing aid compatibility transition date ends, we will update the form to ensure it collects pertinent compliance information for both handset manufacturers and service providers. Nationwide service providers will begin filing this revised FCC Form 855 after their 100% hearing aid compatibility transition period ends and, likewise, non-nationwide service providers will begin filing the

³⁴⁵ See FCC Form 655: Hearing Aid Compatibility Status Reporting Instructions For Device Manufacturers at 11; FCC Form 855: Hearing Aid Compatibility Certification Instructions For Service Providers at 8. These forms and instructions can be found here: <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Dec. 10, 2021).

³⁴⁶ CTIA Ex Parte Letter at 5 & n.17; *see also* CTIA 2nd Ex Parte Letter at 5 & n. 17.

³⁴⁷ *See* CTIA Reply at 15.

³⁴⁸ Accessibility Advocates Comments at 26.

³⁴⁹ *Id.* at 26-27.

³⁵⁰ *Id.* at 26.

revised form after their 100% hearing aid compatibility transition period ends. Revised FCC Form 855 will require the following information to be provided:

- (i) An affirmative statement as to whether the filer is a handset manufacturer, a nationwide service provider, or a non-nationwide service provider;
- (ii) In the case of a handset manufacturer, an affirmative statement as to whether the filer ceased offering handset models during the reporting period or, in the case of a service provider, the filer ceased offering wireless service during the reporting period;
- (iii) An affirmative statement that the filer did not offer for sale or use in the United States non-hearing aid-compatible handset models for the reporting period as required by paragraphs (c)(2), (c)(4), or (c)(6) of this section, as applicable to the filer;
- (iv) The total number of hearing aid-compatible handset models the filer offered for sale or use in the United States for the reporting period;
- (v) The number of these handset models that met applicable telecoil requirements;
- (vi) The number of these handset models that met the applicable Bluetooth coupling requirement and a statement as to whether the Bluetooth coupling technology was a proprietary or non-proprietary implementation, the name of the Bluetooth coupling technology, and a statement as to whether the Bluetooth technology met the requirements of paragraph (b)(3)(ii) of this section;
- (vii) An affirmative statement that all new handset models added during the reporting period met volume control certification requirements as required by paragraphs (c)(2), (c)(4), or (c)(6) of this section, as applicable to the filer;
- (viii) An affirmative statement that the filer was in full compliance with the labeling and disclosure requirements in paragraph (f) of this section;
- (ix) A statement as to whether the filer used digital labeling technology to deliver to consumers the information required by paragraph (f)(2) of this section, as an alternative to including a printed insert or printed handset manual;
- (x) If the filer maintains a publicly accessible website, the filer must include a link to the website showing compliance with paragraph (h) of this section or, if the filer does not maintain a publicly accessible website, an affirmative statement that the filer does not maintain a publicly accessible website and has included an attachment with its filing showing the information required by paragraph (h)(1) of this section;
- (xi) The name of the signing executive and contact information;
- (xii) The company(ies) covered by the certification;
- (xiii) The FCC Registration Number (FRN); and
- (xiv) The following language:

I am a knowledgeable executive of [company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements.

I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable reporting period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR § 1.16 that the above certification is consistent with 47 CFR § 1.17, which requires truthful and accurate statements to the Commission. The company

also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

(xv) If the company selected that it was not in full compliance with this section, an explanation of which wireless hearing aid compatibility requirements it was not in compliance with, when the non-compliance began and (if applicable) ended with respect to each requirement.

130. Collecting this information will aid the Commission in ensuring that handset manufacturers and service providers are in full compliance with our 100% hearing aid compatibility requirement, the related handset model deployment benchmarks, and the labeling, disclosure and website posting requirements. By moving handset manufacturers from FCC Form 655 to FCC Form 855, we reduce regulatory burden and cost for handset manufacturers. Handset manufacturers will spend less time and resources filing FCC Form 855. The information that the form collects is pertinent to ensuring compliance with our 100% hearing aid compatibility requirement and should be readily available to handset manufacturers and service providers.

131. With respect to handset manufacturers and service providers who do not maintain publicly accessible websites, we require these companies to include an attachment with their FCC Form 855 certification filings that contains all of the handset model information that they would otherwise have to post on their publicly accessible websites. This requirement includes the following information: (1) a list of all currently offered handset models, including each handset model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI Standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; and (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. This attachment requirement will allow the Commission to review the compliance of handset manufacturers and service providers with our hearing aid compatibility rules who do not maintain publicly accessible websites.

132. Along with transferring handset manufacturers to FCC Form 855 after the passing of the handset manufacturer's 100% hearing aid compatibility transition period, we align the handset manufacturer filing deadline and reporting period with the service provider filing deadline and reporting period. Currently, handset manufacturer compliance filings are due by July 31 each year and cover the reporting period from the previous July 1 to June 30. Service provider compliance filings are due by January 31 of each year and cover the previous calendar year from January 1 through December 31.³⁵¹ By aligning the handset manufacturer filing deadline and reporting period with the current service provider filing deadline and reporting period, we avoid confusion that might develop if we maintained two separate filing deadlines and reporting periods for FCC Form 855.

133. We are aware that the handset manufacturer 100% hearing aid compatibility requirement will begin during a reporting period. Rather than having these companies file FCC Form 655 to cover

³⁵¹ The service provider filing window opens the first business day in January and closes on January 31 each year. If January 31 falls on a weekend or holiday, then the filing window closes on the next business day. The same is true with respect to the handset manufacturer filing window opening and closing. The handset manufacturer filing window opens on the first business day in July and closes on July 31. If July 31 falls on a weekend or holiday, then the filing window closes on the next business day.

part of one reporting period and FCC Form 855 to cover part of another reporting period, we will require handset manufacturers to file FCC Form 855 to cover the entire calendar year that the 100% hearing aid compatibility requirement becomes effective. Likewise, we are aware that this same issue will arise with nationwide and non-nationwide service providers. We will require these companies to file revised FCC Form 855 to cover the entire reporting period that the 100% hearing aid compatibility requirement becomes effective rather than filing the existing FCC Form 855 for part of the reporting period and revised FCC Form 855 for the remaining part of the reporting period. We take these steps to ensure an orderly transition to the new compliance filing requirements. When reviewing the first FCC Form 855 filings by handset manufacturers and the first revised FCC Form 855 by service providers we will recognize the transitional nature of these first certification filings and to the extent we have questions about the filings we will check the filing company's publicly accessible website or attachment to ensure current compliance with the 100% hearing aid compatibility requirement.

134. Finally, we delegate authority to WTB to revise the information that FCC Form 855 collects, as well as other forms and certifications under this rule section,³⁵² to ensure that these forms and certifications collect relevant information from handset manufacturers and service providers that allows WTB to confirm compliance with the hearing aid compatibility rules.³⁵³ These revisions must be consistent with existing hearing aid compatibility requirements as reflected in the rules and the form and certification modifications must not impose new obligations other than the information that must be provided. Any revisions to FCC Form 855 will be done in accordance with Paperwork Reduction Act (PRA) requirements. These requirements include notification requirements.³⁵⁴ Therefore, the public will have notice of any proposed changes to FCC Form 855 and an opportunity to comment on these proposed changes before the changes become effective. Further, WTB will post revised FCC Form 855 to its wireless hearing aid compatibility website once the Office of Management and Budget completes its review of the form's revisions.³⁵⁵

3. Reliance on Accessibility Clearinghouse Information

135. We decline to adopt the HAC Task Force's recommendation that we permit service providers to legally rely on the information reported in the Global Accessibility Reporting Initiative (GARI) database, which is linked to on the Commission's Accessibility Clearinghouse website.³⁵⁶ Specifically, the HAC Task Force argues that we should allow service providers to rely on this information as a legal safe harbor for purposes of meeting handset model deployment benchmarks.³⁵⁷ The

³⁵² See *supra* para. 47 (handset manufacturers must submit a sworn declaration attesting to a handset model's compliance with the Commission's Bluetooth compatibility requirements).

³⁵³ See Appendix B, Final Rules, section 20.19(i)(6).

³⁵⁴ See 44 U.S.C. § 3506.

³⁵⁵ See FCC, *Filing Hearing Aid Compatibility Reports and Certifications, Hearing Aid Compatibility Status Reporting*: <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Sept. 26, 2024).

³⁵⁶ HAC Task Force Final Report at 26-28. GARI is a project of the Mobile & Wireless Forum populated by handset manufacturers and app developers with the objective of "helping consumers learn about the accessibility features of mobile devices and to identify devices with the features that may assist them with their particular needs"). See GARI, *What Do You Want to Find?* Gari.info, <http://gari.info/> (last visited Oct. 10, 2024) (providing a search field to accessibility information, including handset model hearing aid compatibility information). GARI is an ongoing project of the Mobile and Wireless Forum, "an international association of companies with an interest in mobile and wireless communication. . . . The MWF focuses on a range of issues concerning mobile and wireless devices including RF health and safety, certification testing standards and requirements, counterfeit, counterfeit issues and accessibility." GARI, *Contact GARI*, <https://www.gari.info/contact.cfm> (last visited Oct. 10, 2024).

³⁵⁷ HAC Task Force Final Report at ii, 27. The Commission's Accessibility Clearinghouse can be found at <https://www.fcc.gov/ach> (last updated Nov. 19, 2020).

HAC Task Force asserts that the GARI database provides a more up-to-date snapshot of hearing aid-compatible handset models than the annual FCC Form 655 reports that handset manufacturers file.³⁵⁸ Presently, the Commission allows service providers to rely on the information found in FCC Form 655 reports as a legal safe harbor for handset model deployment purposes.³⁵⁹

136. In the *100% HAC Notice*, we proposed to decline the HAC Task Force's recommendation with respect to the GARI database.³⁶⁰ The Commission expressed concern about the accuracy of the information in the GARI database and the fact that the Commission does not maintain the database.³⁶¹ Further, we proposed to decline the HAC Task Force's recommendation that, if a handset model is not in the GARI database, the Commission "automatically and immediately upload" handset manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse after they are submitted to the Commission.³⁶² In addition, we sought comment on whether our rules should continue to require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer once the relevant 100% transition period ends.³⁶³

137. In response to the *100% HAC Notice*, we received comments from MWF, who is the developer and administrator of the GARI database, and CTIA. MWF and CTIA argue that we should allow service providers to rely on information in the GARI database because the database provides more up-to-date information than FCC Form 655 reports that handset manufacturers file each year.³⁶⁴ MWF argues that the GARI database is more user-friendly than FCC Form 655 reports and provides a more complete overview of a handset model's accessibility features than FCC Form 655 reports.³⁶⁵ MWF also states that it is willing to discuss with the Commission ways to address the Commission's reservations concerning the accuracy of the database.³⁶⁶

138. We find this issue to be moot given our decisions above. After the handset manufacturer 100% hearing aid compatibility transition period ends, handset manufacturers will no longer be able to offer non-hearing aid-compatible handset models. Service providers who continue to offer non-hearing aid-compatible handset models will already have the information they need about these models and further will have to stop offering these models once their 100% hearing aid compatibility transition date ends. With respect to hearing aid-compatible handset models, service providers will be able to locate the information that they need from handset manufacturers' publicly accessible websites or from the handset model's package label. Further, the information on handset manufacturers' publicly accessible websites will be current because we require handset manufacturers to update this information within 30 days of any relevant changes and to date stamp their webpages to show the date of the last update.

139. Further, as we stated in the *100% HAC Notice*, the GARI database is not a Commission-maintained database, and the Commission does not control who can access the database and what

³⁵⁸ HAC Task Force Final Report at 27; see GARI, *Home Page*, <https://www.gari.info> (last visited Oct. 10, 2024).

³⁵⁹ *2018 HAC Order*, 33 FCC Rcd at 11557, para. 20. We also note that, in 2018, the Commission determined that service providers may rely on the GARI database in meeting certain publicly accessible website posting requirements. *Id.* at 11555-56, para. 18.

³⁶⁰ *100% HAC Notice* at 36-38, paras. 129-133.

³⁶¹ *Id.* at 37, para. 131.

³⁶² *Id.* at 37, para. 133.

³⁶³ *Id.* at 37, para. 132; 47 CFR § 20.19(h)(2).

³⁶⁴ CTIA Comments at 3, 14-15; MWF Comments at 14-16; CTIA Reply at 12.

³⁶⁵ MWF Comments at 14-15.

³⁶⁶ *Id.* at 16.

information is added to the database. The Commission has no means of ensuring that the information in the GARI database is accurate, timely, or complete. Moreover, the Commission already allows service providers to rely on the information from a handset manufacturer's FCC Form 655 report as a safe harbor, and we find it unnecessary to create a second safe harbor that may contain inaccurate information. For these reasons, we decline the HAC Task Force's request that we allow service providers to rely on the information in the GARI database for the purpose of determining handset model deployment compliance.

140. During the handset manufacturer 100% hearing aid compatibility transition period, handset manufacturers will continue to file FCC Form 655 reports and service providers can continue to rely on the information in these reports as a safer harbor. The Commission will continue to post these reports on the Commission's wireless hearing aid compatibility website and service providers and members of the public can review these reports at this website.³⁶⁷ Further, the Commission's Accessibility Clearinghouse website links to the Commission's wireless hearing aid compatibility website where the FCC Form 655 reports are posted. As a result, there is no need for the Commission to separately post these reports on the Accessibility Clearinghouse website. Finally, the Commission will post handset manufacturer FCC Form 855 certifications on the Commission's wireless hearing aid compatibility website just as it presently posts handset manufacturer FCC Form 655 reports and service provider FCC Form 855 certifications. Members of the public, as well as handset manufacturers and service providers, will be able to review these certifications after the Commission posts them.

141. Finally, as discussed above, we will no longer require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer. Service providers will be required to post all relevant hearing aid compatibility information about the handset models they offer on their publicly accessible websites where members of the public can review this information. Members of the public will also be able to contact handset manufacturers and service providers directly with questions that they might have about the handset models that these companies offer using the point-of-contact information that we adopt below.

4. Company Point-of-Contact Information for Consumer Use

142. We require handset manufacturers and service providers to post on their publicly accessible websites point-of-contact information that consumers can use to contact knowledgeable company employees with questions they might have about the hearing aid compatibility of handset models that these companies offer or to resolve pairing issues they are having with one of the company's handset models.³⁶⁸ Specifically, along with the other information that we require these companies to post to their publicly accessible websites, we require handset manufacturers and service providers to post: (1) the name of a department or a division that is staffed with employees knowledgeable about the hearing aid compatibility of the handset models that they offer; and (2) an email address, mailing address, text number, and a toll free number that consumers can use to contact these employees. We also require handset manufacturers and service providers to respond to these inquiries in a timely fashion and in a manner consistent with CTIA's Consumer Code for Wireless Service.³⁶⁹

³⁶⁷ See FCC, *Filing Hearing Aid Compatibility Reports and Certifications*, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3>, (last updated Sept. 26, 2024) (links to handset manufacturer FCC Form 655 reports and service provider FCC Form 855 certifications can be found on this webpage).

³⁶⁸ 47 CFR § 20.19(h).

³⁶⁹ See CTIA, *Wireless Industry Commitment, Consumer Code for Wireless Service at Section 8, Provide Ready Access To Customer Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Oct. 10, 2024).

143. In the *100% HAC Notice*, we tentatively concluded that we should require this point-of-contact information on handset manufacturers' and service providers' publicly accessible websites.³⁷⁰ As part of our tentative conclusion, we stated we would require handset manufacturers and service providers to provide the name of a department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could use to contact these employees. We stated that the purpose of this point-of-contact information was to give consumers a way of contacting handset manufacturers and service providers about the hearing aid compatibility of the handset models that they offer and to have their handset model pairing issues resolved.³⁷¹ We also stated that we would expect handset manufacturers and service providers to be responsive to consumer questions and to interact with consumers in a manner consistent with the Consumer Code for Wireless Service that can be found on CTIA's website.³⁷² As an alternative to requiring company point-of-contact information to be posted on company websites, we sought comment on whether we should require handset manufacturers and service providers to enter the required contact information in a Commission-maintained database.³⁷³

144. Accessibility Advocates were the only commenter to address our tentative conclusion, and they urge us to adopt our main proposal.³⁷⁴ They state that point-of-contact information will help consumers, and that it may also help store employees by giving them a resource to assist them in better answering consumer questions about the hearing aid compatibility of the handset models that their company offers.³⁷⁵ Accessibility Advocates recommend that we modify our proposal to include not only a phone requirement, but also a text requirement (e.g., text, email, or chat). They argue that adding this additional contact information will aid those consumers who have difficulty hearing over the phone.³⁷⁶

145. We find that adopting our tentative conclusion is consistent with section 710(a) of the Communications Act that requires the Commission to "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."³⁷⁷ We determine that requiring handset manufacturers and service providers to post point-of-contact information on their publicly accessible websites is consistent with ensuring that consumers with hearing loss have reasonable access to telephone service. Consumers with hearing loss will be able to use this contact information to ask knowledgeable company employees about the hearing aid compatibility of the handset models that their company offers and which of these models might best meet their listening needs. These consumers will also be able to use this contact information to ask knowledgeable company employees about pairing issues that they might be having with one of the company's hearing aid-compatible handset models and their hearing aids. In addition, our point-of-contact requirement may help handset manufacturers and service providers reduce consumer frustration and help these companies to sell handsets and wireless services.

146. We therefore require handset manufacturers and service providers to post on their publicly accessible websites the information that we tentatively concluded that they should post, as well as the additional contact information suggested by Accessibility Advocates. As a result, handset manufacturers and service providers must post on their publicly accessible websites the name of a

³⁷⁰ *100% HAC Notice* at 38, para. 134.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.* at 39, paras. 138-139.

³⁷⁴ Accessibility Advocates Comments at 27-28.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ 47 U.S.C. § 610(a).

department or a division within the company that is staffed with knowledgeable employees who can answer consumer questions about the hearing aid compatibility of the handset models that the company offers and related coupling questions. Handset manufacturers and service providers must also post on their publicly accessible websites an email address, a mailing address, a text number, and a toll free phone number that consumers can use to contact these employees.³⁷⁸ This information must be posted in a manner that is easy for consumers to locate and in a straight-forward, easy to understand fashion using plain language. Further, consistent with our current website posting requirements, we require that handset manufacturers and service providers update this point-of-contact information within 30 days of any relevant changes, and that they date stamp their webpages.³⁷⁹ We also adopt our proposal that consumer inquiries must be responded to in a timely fashion and in a manner consistent with CTIA's Consumer Code for Wireless Service.³⁸⁰

147. We disagree with CTIA that we should limit the required contact information to only one "text-based option" and allow handset manufacturers and service providers to implement options "based on their business such as text, telephone, email, or chatting."³⁸¹ Some consumers with hearing loss may be more comfortable texting rather than emailing or using a chat function. We believe that requiring a broad array of ways for consumers with hearing loss to contact handset manufacturers and service providers is consistent with the public interest. We also note that CTIA's Consumer Code for Wireless Service provides that companies should provide customers with a mailing address, a toll-free telephone number, an Internet method, or through other means of communication.³⁸² In short, providing a broad array of ways to contact knowledgeable company employees is in the best interest of consumers.

148. We will not require handset manufacturers and service providers to enter their point-of-contact information in a Commission-maintained database. We find that this approach would duplicate our website posting requirement and would be burdensome and unnecessary. Further, we find that our website posting approach is more consumer friendly than creating a Commission-maintained database. Consumers naturally expect to find point-of-contact information on handset manufacturer and service provider publicly accessible websites and would not intuitively look for this contact information in a Commission-maintained database. In addition, when looking at handset manufacturer or service provider publicly accessible websites, consumers may find the answer to their questions on the website without having to contact the company. Our revised website posting requirements will ensure handset manufacturers and service providers post all relevant information about the handset models that they offer, including coupling information. A Commission-maintained database would not contain specific handset model hearing aid compatibility information. We did not receive comments asking us to create a

³⁷⁸ In addition to posting point-of-contact information, Accessibility Advocates recommend that handset manufacturers and service providers utilize chat programs on their publicly accessible websites. Accessibility Advocates Comments at 27-28. While we encourage handset manufacturers and service providers to consider installing chat programs on their publicly accessible websites, we will not require the installation of these programs at this time. We will allow handset manufacturers and service providers to evaluate whether the installation of chat programs on their publicly accessible websites would be helpful to consumers with hearing loss.

³⁷⁹ 47 CFR § 20.19(h)(4).

³⁸⁰ See *supra* note 369.

³⁸¹ CTIA Ex Parte Letter at 6; see also CTIA 2nd Ex Parte Letter at 6. We also note that Accessibility Advocates suggest that we continue to require an email address, but allow service providers and manufacturers to choose a "text-based option (such as a text number or chat function on their website)." Accessibility Advocates Ex Parte at 4. We remain concerned that texting and chatting are not interchangeable to consumers, and, accordingly, we require service providers and handset manufacturers to make a text number available.

³⁸² See CTIA, *Wireless Industry Commitment, Consumer Code for Wireless Service at Section 8, Provide Ready Access To Customer Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Oct. 10, 2024).

Commission-maintained database where handset manufacturer and service provider point-of-contact information could be found.

149. Finally, we determine to maintain the last sentence of section 20.19(j) which provides that for enforcement purposes, if a state does not provide for enforcement, the procedures set forth in part 68, subpart E of the Commission's rules should be followed.³⁸³ In the *100% HAC Notice*, we proposed to delete this sentence, and we did not receive any comments opposing this change.³⁸⁴ We are concerned, however, that removing this sentence could harm consumers if a state declines to provide for enforcement of our hearing aid compatibility rules with respect to a consumer complaint. Under these circumstances, the procedures in part 68, subpart E of the Commission's rules would apply.³⁸⁵ The Commission has recognized and continues to recognize the essential role consumers play in detecting non-compliance with our hearing aid compatibility rules.³⁸⁶ As a result, we determine to maintain the last sentence of section 20.19(j). The rules contained in part 68, subpart E explain the procedures consumers must follow to initiate a complaint and explains the obligations of parties named in those complaints.³⁸⁷ The deadlines contained in those rules ensure that consumers' complaints will be addressed in an expeditious manner.³⁸⁸

J. Sunsetting the Hearing Aid Compatibility *De Minimis* Exception

150. We eliminate the *de minimis* exception in our hearing aid compatibility rules using a three step process that is consistent with the 100% hearing aid compatibility transition periods we adopted above. Section 20.19(e) of the Commission's rules contains an exception to the handset model deployment benchmarks based on the number of handset models handset manufacturers and service providers offer for sale or use in the United States.³⁸⁹ In the *100% HAC Notice*, we tentatively concluded that we should eliminate the *de minimis* exception because maintaining the exception would be inconsistent with our objective of adopting a 100% hearing aid compatibility requirement.³⁹⁰ Specifically, we tentatively concluded that we should eliminate the exception based on the applicable 100% hearing aid compatibility transition periods for handset manufacturers and service providers.³⁹¹ We did not receive any comments objecting to our proposal to eliminate the *de minimis* exception or arguing that we should eliminate the exception in a manner different than basing it on the expiration of the relevant 100% hearing aid compatibility transition periods.

³⁸³ 47 CFR § 20.19(j).

³⁸⁴ *100% HAC Notice* at 39-40, para. 140.

³⁸⁵ *2003 HAC Order*, 18 FCC Rcd at 16789, para. 95 (extending the procedures of part 68 subpart E to wireless hearing aid compatibility requirements).

³⁸⁶ *2003 HAC Order*, 18 FCC Rcd at 16789, para. 95.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ 47 CFR § 20.19(e). Specifically, section 20.19(e)(1) provides that manufacturers and service providers offering two handset models or fewer in the United States over an air interface are exempt from the requirements of section 20.19, other than the reporting requirement. Section 20.19(e)(2) provides that handset manufacturers or service providers that offer three handset models over an air interface in the United States must offer at least one compliant handset model. Section 20.19(e)(3) provides that handset manufacturers or service providers that offer four handset models in an air interface in the United States must offer at least two handset models that are hearing aid compatible in that air interface and handset manufacturers and service providers that offer five handset models in an air interface in the United States must offer at least three handset models that are hearing aid-compatible in that air interface.

³⁹⁰ *100% HAC Notice* at 40-41, paras. 141-144.

³⁹¹ *Id.*

151. We find that eliminating the *de minimis* exception in section 20.19(e) of the Commission's rules is consistent with our adoption of a 100% hearing aid compatibility requirement. If we were to maintain the exception, this would undercut our decision to adopt a 100% hearing aid compatibility requirement. Maintaining the *de minimis* exception or some part of the exception would mean that handset manufacturers and service providers who only offer for sale or use in the United States a limited number of handset models would be able to offer handset models that were not certified as hearing aid compatible. This result would be inconsistent with our decision to require all handset models to be hearing aid compatible. Further, given the number of handset models that are already certified as hearing aid-compatible and the transition periods that we adopted above, there is no reason to believe that our handset model deployment benchmarks will have a disproportionate impact on handset manufacturers or service providers who only offer a limited number of handset models for sale or use in the United States. Additionally, we have not received anything in the record that contradicts our findings.

152. In addition, we find that it is unnecessary to maintain a *de minimis* exception for new entrants who may only offer a limited number of handset models for sale or use in the United States. With respect to new entrant handset manufacturers, after the effective date of the Commission's 100% hearing aid compatibility requirement, these companies could not offer for sale or use in the United States handset models that do not meet the certification requirements of the 2019 ANSI Standard and the related volume control requirements. To allow new entrant handset manufacturers to offer non-hearing aid-compatible handset models would be inconsistent and undercut our 100% hearing aid compatibility requirement. Further, new entrant service providers can only offer new handset models certified as hearing aid-compatible using the 2019 ANSI Standard and the related volume control standard.³⁹² The 2019 ANSI Standard and the related volume control standard are the only currently effective hearing aid compatibility certification standards in place for certifying new handset models as hearing aid compatible.

153. With respect to new entrant service providers, once the relevant 100% hearing aid compatibility transition period ends, these companies can only offer for sale or use in the United States handset models certified under the 2019 ANSI Standard, including the related volume control standard. Similar to new entrant handset manufacturers, it would be inconsistent with the Commission's 100% hearing aid compatibility requirement to allow these companies to offer non-hearing aid-compatible handset models after the effective date of the new standard. Further, allowing new entrant service providers to offer for sale or use in the United States handset models certified under the 2011 ANSI Standard or older ANSI standards after the passing of the relevant transition date would slow the transition of all handset models offered for sale or use in the United States meeting the latest certification requirements of the 2019 ANSI Standard and our adoption of a 100% volume control standard. This finding is consistent with our decision that existing service providers can only add new handset models to their handset model portfolios after the passing of the relevant 100% hearing aid compatibility transition date that meet the requirements of the 2019 ANSI Standard and the related volume control requirements.³⁹³ We note, however, that a consumer could purchase a grandfathered hearing aid-compatible handset model from a handset manufacturer and bring it to the new entrant's wireless network as long as the handset model is compatible with new entrant's wireless network. This ability to purchase grandfathered hearing aid-compatible handset models ensures that consumers will have the ability to purchase lower cost hearing aid-compatible handset models as long as the handset models are compatible with new entrant's wireless network. For all of the above reasons, we find it in the best interest of consumers with hearing loss to completely eliminate the *de minimis* exception in our hearing aid compatibility rules.

154. As a result, we will sunset the *de minimis* exception in section 20.19(e) of the Commission's rules using the three-step process that we proposed. Specifically, we will eliminate the

³⁹² See *supra* para. 59.

³⁹³ *Id.*

exception based on the 100% hearing aid compatibility transition periods that we adopted above. After the 24-month transition period ends for handset manufacturers, the *de minimis* exception for handset manufacturers will end. Likewise, after the 30-month transition period ends for nationwide service providers, the *de minimis* exception for nationwide service providers will end. Finally, after the 42-month transition period for non-nationwide service providers ends, the *de minimis* exception for non-nationwide service providers will end too. Once the non-nationwide service provider transition period ends, the *de minimis* exception in section 20.19(e) of the Commission's rules will be eliminated for all handset manufacturers and service providers and these companies will no longer be able to claim *de minimis* status.

K. 90-Day Shot Clock for Resolving Hearing Aid Compatibility Waiver Requests

155. We decline to adopt the HAC Task Force's recommendation that we establish a 90-day shot clock for resolving hearing aid compatibility waiver requests.³⁹⁴ In the *100% HAC Notice*, we proposed to decline the HAC Task Force's recommendation because we did not anticipate that establishing a shot clock would be necessary to ensure the timely resolution of potential future waiver requests or to ensure the timely deployment of new hearing aid compatibility technologies.³⁹⁵ We noted that section 710(f) of the Communications Act requires the Commission to periodically review the regulations established pursuant to the Act, and that this statutory obligation curtails the need for waiver requests.³⁹⁶

156. CTIA, the only party to file comments on this issue, supports the HAC Task Force's recommendation. CTIA argues that handset manufacturers need prompt answers to whether their waiver requests will be granted and that "90 days properly balances (i) expected low number of expected petitions, and, relatedly, the burden on FCC staff, (ii) an opportunity for public notice and comment, with (iii) the need for timely resolution of petitions to ensure the deployment of new technologies is not unduly delayed."³⁹⁷

157. We disagree with CTIA. We do not believe that the establishment of a shot clock is necessary to ensure the timely resolution of potential future waiver requests or to ensure that the deployment of new technologies is not delayed. Section 710(b)(3) of the Communications Act provides that the Commission shall not grant a waiver unless the Commission determines on the basis of evidence in the record that granting the waiver is in the public interest and that the Commission "consider the effect [of the waiver] on hearing-impaired individuals"³⁹⁸ Given the highly technical nature of the questions that arise in hearing aid compatibility proceedings, a 90-day shot clock could limit public participation and negatively impact staff's ability to work with affected stakeholders to develop consensus solutions that serve the interest of consumers with hearing loss. In addition to providing time for public participation, the Commission often needs to allow time for petitioners to supplement the record with additional information and data in order for the Commission to have the necessary record evidence to be able to resolve the petition. A 90-day time limit to resolve waiver petitions could directly impact the Commission's ability to fully consider the effect of the waiver request on those with hearing loss and, as a result, the Commission's ability to act in the public interest.

³⁹⁴ HAC Task Force Final Report at ii, 30-31.

³⁹⁵ *100% HAC Notice* at 41, paras. 145-146.

³⁹⁶ *Id.* at 41, para 146.

³⁹⁷ CTIA Comments at 13 (citing the HAC Task Force Final Report at 30).

³⁹⁸ 47 U.S.C. § 610(b)(3) (the Commission shall not grant a waiver unless the Commission determines on the basis of evidence in the record that granting a waiver is in the public interest, and the Commission shall consider the effect of the waiver on hearing-impaired individuals).

158. We also note that the Commission’s practice when adopting new hearing aid compatibility requirements has been to do so in conjunction with adopting appropriate transition periods. For example, when the Commission adopted the 2019 ANSI Standard the Commission also adopted a 24-month transition period in order to allow handset manufacturers and service providers adequate time to adjust to the new standard.³⁹⁹ Further, in 2016 when the Commission adopted the 66% and 85% handset model deployment benchmarks, the Commission also adopted a 24-month and 60-month transition period before handset manufacturers had to meet these new benchmarks, respectfully.⁴⁰⁰ The Commission extended these compliance deadlines by six months for nationwide service providers and by 18 months for non-nationwide service providers.⁴⁰¹ The Commission’s use of appropriate transition periods allows handset manufacturers and service providers time to adjust to new hearing aid compatibility requirements, and avoids the need for waiver requests.

159. Further, as we did in the *100% HAC Notice*, we again note that section 710(f) of the Communications Act requires the Commission to periodically review the regulations established pursuant to the Act.⁴⁰² As evidenced by the number of actions that the Commission has taken with respect to the hearing aid compatibility rules over the years, the Commission frequently seeks comment on these rules and adopts revisions to the rules where needed.⁴⁰³ The Commission gives handset manufacturers, service providers, advocacy groups, members of the public, and individuals with hearing loss the opportunity to comment on proposed changes to these rules. This opportunity gives commenters the ability to inform the Commission of issues that might arise that could lead to waiver petitions. We encourage commenters to file meaningful and thoughtful comments when the Commission solicits comment on proposed hearing aid compatibility rule changes in order to avoid the need to file waiver requests at a later date.⁴⁰⁴

L. Renaming Section 20.19

160. To better reflect the scope of this rule, we change the heading of section 20.19 of our hearing aid compatibility rules from “Hearing aid-compatible mobile handsets” to “Hearing loss compatible wireless handsets” or “HLC” for short.⁴⁰⁵ In the *100% HAC Notice*, we sought comment on whether we should revise the heading of section 20.19 of our rules to better reflect the scope of the section’s requirements.⁴⁰⁶ We noted that while the rules are intended to help ensure access to communications services for consumers who use hearing aids, they are also intended to help consumers who use other types of hearing devices, such as cochlear implants and telecoils, as well as consumers with

³⁹⁹ *2021 HAC Order*, 36 FCC Rcd at 4576, para. 22.

⁴⁰⁰ *2016 HAC Order*, 31 FCC Rcd at 9343, para 20.

⁴⁰¹ *Id.*

⁴⁰² 47 U.S.C. § 610(f); *see also id.* § 610(b)(3) (“The Commission shall periodically review and determine the continuing need for any waiver granted . . .”).

⁴⁰³ *See* FCC, *Hearing Aid Compatible Mobile Handsets, Orders and Notices*, <https://www.fcc.gov/hearing-aid-compatibility-wireless-telephones> (last updated Oct. 1, 2024).

⁴⁰⁴ In this regard, we note that CTIA filed comments requesting that the Commission adopt the 2019 ANSI Standard and then subsequently requested that the Commission waive part of the standard after the Commission adopted the standard into the hearing aid compatibility rules based in part on CTIA’s recommendation. *See* CTIA Comments, WT Docket No. 20-3 (filed Apr. 6, 2020) (CTIA supports the Commission’s adoption of the 2019 ANSI Standard into the Commission’s hearing aid compatibility rules); Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-3 (filed Mar. 29, 2023) (CTIA urges the Commission to grant relief in light of the 2019 ANSI Standard’s flawed volume control testing methodology).

⁴⁰⁵ 47 CFR § 20.19.

⁴⁰⁶ *100% HAC Notice* at 41, para. 147.

hearing loss who do not use hearing aids.⁴⁰⁷ We sought comment on whether we should rename the section “Accessibility for Consumers with Hearing Loss” or “Hearing Loss Interoperability Requirements.”⁴⁰⁸ We also asked if there were alternative headings that we should consider.⁴⁰⁹

161. Accessibility Advocates were the only party to file comments on this issue. They agree that the heading of section 20.19 should be changed to better reflect the scope of this section, and they recommend that the heading be changed to “Wireless Phone Accessibility for Consumers with Hearing Loss.”⁴¹⁰ We, however, prefer a more concise heading for the rule section that can be abbreviated to three letters. Accordingly, we change the heading of section 20.19 to “Hearing loss compatible wireless handsets” or “HLC” for short. We find that this revised heading better conveys the scope of the 20.19 rule section than the current heading. The section covers not just hearing aids, but also cochlear implants and telecoils. In addition, the section’s volume control requirements help those with hearing loss who use hearing aids, but also those with hearing loss who do not use hearing aids. The section’s new heading conveys the broader scope of the rules contained in the section.

M. Promoting Digital Equity and Inclusion

162. We find that our decision to adopt a 100% hearing aid compatibility requirement furthers our goal to advance digital equity and inclusion for all. In the *100% HAC Notice*, we specifically sought comment on any equity-related considerations and benefits that might be associated with the proposals and issues discussed therein.⁴¹¹ In response, Accessibility Advocates state that requiring 100% of handset models to be hearing aid-compatible advances digital equity and inclusion for all.⁴¹² We agree with Accessibility Advocates. Our adoption today of a 100% hearing aid compatibility requirement means that for the first time those with hearing loss will be able to consider any handset model on the market for their use just like consumers without hearing loss.⁴¹³ The Commission takes seriously its commitment to digital equity and inclusion for all, and we will continue to monitor and update the hearing aid compatibility rules to ensure those with hearing loss will continue to have the same access to handset models as those without hearing loss.

V. PROCEDURAL MATTERS

163. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁴¹⁴ 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.”⁴¹⁵ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and policy changes contained in this Report and Order.⁴¹⁶ The FRFA is set forth in Appendix C.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ Accessibility Advocates Comments at 28.

⁴¹¹ *100% HAC Notice* at 42, para. 148.

⁴¹² Accessibility Advocates Comments at 28.

⁴¹³ *Id.*

⁴¹⁴ 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).

⁴¹⁵ 5 U.S.C. § 605(b).

⁴¹⁶ See *id.* § 603(a).

164. *Paperwork Reduction Act.* The requirements in revised section 20.19(b)(3)(iii), (f), (h), and (i)(4)-(5) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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 information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the FRFA in Appendix C.

165. *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).

166. *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.

167. *Contact Person.* For further information about this proceeding, contact Eli Johnson, FCC, Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418-1395, Eli.Johnson@fcc.gov.

VI. ORDERING CLAUSES

168. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 610, this Report and Order IS HEREBY ADOPTED.

169. IT IS FURTHER ORDERED that the revisions to part 20 of the Commission’s rules, 47 CFR part 20, as set forth in Appendix B ARE ADOPTED, effective thirty days from the date of publication in the Federal Register, except that the amendments to section 20.19(b)(3)(iii), (f)(3), (h), and (i)(4)-(5) will become effective following the completion of review by the Office of Management and Budget. Section 20.19, paragraphs (b)(3)(iii), (f)(3), (h), and (i)(4)-(5) may contain new or modified information collection requirements that require review by the Office of Management and Budget under the PRA. The Commission will publish a document in the Federal Register announcing the effective date of the revisions to section 20.19(b)(3)(iii), (f)(3), (h), and (i)(4)-(5), following the completion of review by the Office of Management and Budget.

170. IT IS FURTHER ORDERED that the revisions to section 20.19(f)(1) and (2) will become effective either after the Office of Management and Budget completes its review of any information collection requirements contained in these sections or twenty-five months after the date that a summary of this Report and Order is published in the Federal Register, whichever is later. The Commission will publish a document in the Federal Register announcing the effective date of the revisions to section 20.19(f)(1) and (2).

171. 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.

172. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Parties Filing Comments****Comments**

Accessibility Advocacy and Research Organizations (Accessibility Advocates)
Consumer Technology Association (CTA)
CTIA
Hearing Aid Compatibility Task Force (HAC Task Force)
Janice Lintz (Lintz)
Mobile & Wireless Forum (MWF)
Samsung Electronics America, Inc. (Samsung)

Reply Comments

Bluetooth Special Interest Group (Bluetooth SIG)
Competitive Carriers Association (CCA)
Consumer Technology Association (CTA)
CTIA
Mobile & Wireless Forum (MWF)

APPENDIX B

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 155, 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, and 615c, unless otherwise noted.

2. Amend § 20.19 by:

- a. Revising the heading of the section;
- b. Revising paragraph (a);
- c. Revising paragraphs (b)(1) and (b)(2), adding new paragraph (b)(3), redesignating paragraph (b)(3) as paragraph (b)(4) and revising, adding new paragraphs (b)(5) and (b)(6), redesignating paragraph (b)(4) as paragraph (b)(7), and redesignating paragraph (b)(5) as paragraph (b)(8) and revising;
- d. Revising introductory text of paragraph (c), revising paragraphs (c)(1)-(c)(3), adding paragraphs (c)(4)-(c)(6), and redesignating paragraph (c)(4) as paragraph (c)(7) and revising;
- e. Adding paragraph (e)(4);
- f. Revising paragraph (g); and
- g. Revising paragraph (i)(4).

The revisions and additions read as follows:

§ 20.19 Hearing loss compatible wireless handsets.

- (a) *Definitions.* For purposes of this section:

2007 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 800 MHz and 3 GHz as set forth in ANSI C63.19-2007.

2011 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 698 MHz and 6 GHz as set forth in ANSI C63.19-2011.

2019 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 614 MHz and 6 GHz as set forth in ANSI C63.19-2019.

Acoustic coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids through the use of the hearing aid's microphone that amplifies sound and the handsets meet standards for controlling radiofrequency (RF) interference between the handsets and hearing aids.

ANSI standard refers to the 2007, 2011, and 2019 ANSI standards as a group.

Any version of the ANSI standard previous to the 2019 ANSI standard refers to the 2007 and 2011 ANSI standards.

Bluetooth coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids using short range wireless technology that relies on internal chipsets and antennas within the handset model.

Digital labeling technology refers to Quick-Response (QR) codes and related website addresses that link to additional online information about a handset model's hearing aid compatibility.

Digital mobile service refers to a terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected voice over internet protocol (VoIP) services, to the extent that such service is provided over frequencies specified in the 2007 ANSI standard, 2011 ANSI standard, or the 2019 ANSI standard.

Handset refers to a device used in delivery of digital mobile service in the United States that contains a built-in speaker and is typically held to the ear in any of its ordinary uses.

Handset manufacturer refers to a manufacturer of handset models that are used in delivery of digital mobile service, as defined in this section, in the United States.

Handset model portfolio refers to all of the handset models that a handset manufacturer or service provider offers for sale or use in the United States.

Hearing aid refers to hearing aids and cochlear implants.

Hearing aid-compatible refers to a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable, as the Commission has defined these terms.

Model refers to a wireless handset that a handset manufacturer has designated as a distinct handset model, consistent with its own marketing practices. However, if a handset manufacturer assigns different model number designations solely to distinguish handset models sold to different service providers, or to signify other distinctions that do not relate to either form, features, or capabilities, such model number designations shall not count as distinct handset models for purposes of this section.

Nationwide service provider refers to a provider of commercial mobile radio service, as defined in this section, that offers such service nationwide.

Non-nationwide service provider refers to a provider of commercial mobile radio service, as defined in this section, that does not offer such service on a nationwide basis.

Publicly accessible website refers to a consumer facing website that handset manufacturers and service providers maintain and that consumers can locate through a website search.

Service provider refers to a provider of digital mobile service, as defined in this section, in the United States.

Telecoil coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids through the use of telecoils. This form of compatibility can be referred to as inductive coupling.

Volume control requirements refers to the technical standard established by ANSI/TIA-5050-2018.

(b) *Hearing aid compatibility; technical standards—*

(1) *Handset model compatibility before [INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* A handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet the certification requirements of the 2019 ANSI standard, including applicable volume control requirements.

(2) *Handset model compatibility on or after [INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* A handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet:

- (i) The 2019 ANSI standard's acoustic coupling requirements;
 - (ii) The 2019 ANSI standard's volume control requirements; and
 - (iii) Either the 2019 ANSI standard's telecoil coupling requirements or have Bluetooth coupling technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.
 - (iv) All such new handset models must come out-of-the-box with their hearing aid compatibility related acoustic and volume control functions turned on by default. Such handset models may also have secondary settings to turn on the handset model's telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model. All such handset models must have settings for acoustic, telecoil, or Bluetooth coupling (depending on the coupling functionality included) and volume control functionality that are clearly labeled and allow consumers to easily find these settings and to turn these functions on or off as they desire.
- (3) *Bluetooth coupling requirements.*
- (i) Between *[INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]* and *[INSERT DATE FORTY-NINE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, the Bluetooth coupling requirement may be met using either proprietary or non-proprietary Bluetooth coupling technology.
 - (ii) Beginning on *[INSERT DATE FORTY-NINE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, the Bluetooth coupling requirement may only be met using Bluetooth coupling technology that: (1) utilizes a global, low power wireless technology standard for high quality audio voice streaming; (2) is a standalone non-proprietary implementation; (3) is a qualified implementation that has undergone testing to verify that the product conforms to the specifications it claims to support; (4) offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform and inter-handset manufacturer functionality; and (5) uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use.
- (4) *Handset models operating over multiple frequency bands or air interfaces.*
- (i) Between *[INSERT DATE ONE MONTH AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]* and *[INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(1) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.
 - (ii) Beginning on *[INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(2) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and (1) the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard (including the telecoil requirements) pursuant to § 2.1033(d) of this chapter; or (2) the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard (except for the telecoil requirements) pursuant to § 2.1033(d) of this chapter and meets the Bluetooth coupling requirements of paragraphs (b) and (c) of this section.
- (5) *Non-hearing aid-compatible handset models.* Beginning on *[INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, any non-hearing aid-compatible handset models cannot obtain a certification under 47 CFR, part 2, subpart J.

(6) *Software updates.*

(i) Handset models certified as hearing aid-compatible may not be modified through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards. In addition, a handset model's conversational gain may not be lowered through a software push, unless the impact on the conversational gain of a handset model is *de minimis*. The Commission has delegated to the Wireless Telecommunications Bureau, in coordination with the Office of Engineering and Technology, authority to revise this paragraph to further define the scope of this *de minimis* exception as needed.

(ii) Consumers must be notified prior to installing a software push if the software push will install new operations or bands that are not covered by the applicable hearing aid compatibility certification standards and, therefore, these new operations or bands will not meet hearing aid compatibility certification requirements.

(7) *Factual questions.* * * *

(8) *Grandfathered handset model.* A handset model certified under any version of Commission authorized technical standards prior to the currently effective technical standards may continue to be offered for sale or use, as long as the Commission permits the handset model to continue to be offered for sale or use.

(c) *Phase-in of hearing aid-compatibility requirements.* The following applies to each handset manufacturer and service provider that offers handset models for sale or use in the United States that are used to deliver digital mobile services as specified in paragraph (a) of this section.

(1) *Handset manufacturers—Number of hearing aid-compatible handset models offered for sale or use in the United States prior to [INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(2) *Handset manufacturers—Number of hearing aid-compatible handset models offered for sale or use in the United States after [INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* All handset models shall meet the following hearing aid compatibility requirements:

(i) 100% of these handset models must meet the 2019 ANSI standard's acoustic coupling requirements or have been certified as meeting the M3 acoustic rating under a previous ANSI standard;

(ii) At least eighty-five (85) percent of those handset models (rounded down to the nearest whole number) must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard;

(iii) At least fifteen (15) percent of those handset models (rounded up to the nearest whole number) must have Bluetooth coupling technology consistent with paragraphs (a) and (b)(3) of this section as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standards;

(iv) 100% of these handset models must meet at least two forms of coupling. Specifically, all handsets must: (1) meet the acoustic coupling requirement, as specified in paragraph (c)(2)(i) of this section, and meet the telecoil requirement, as specified in paragraph (c)(2)(ii) of this section, or (2) meet the acoustic coupling requirement, as specified in paragraph (c)(2)(i) of this section, and have Bluetooth coupling technology, as specified in paragraph (c)(2)(iii) of this section; and

(v) All new handset models that a handset manufacturer adds to its handset model portfolio must meet the 2019 ANSI Standard's volume control requirements.

(3) *Nationwide service providers—Number of hearing aid-compatible handset models offered prior to [INSERT DATE THIRTY-ONE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(4) *Nationwide service providers—Number of hearing aid-compatible handset models offered after [INSERT DATE THIRTY-ONE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* All handset models that nationwide service providers offer and add to their handset model portfolios must meet the same requirements that handset manufacturer handset models must meet as set forth in paragraph (c)(2) of this section.

(5) *Non-nationwide service providers—Number of hearing aid-compatible handset models offered prior to [INSERT DATE FORTY-THREE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(6) *Non-nationwide service providers—Number of hearing aid-compatible handset models offered after [INSERT DATE FORTY-THREE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].* All handset models that non-nationwide service providers offer and add to their handset model portfolios must meet the same requirements that handset manufacturer handset models must meet as set forth in paragraph (c)(2) of this section.

(7) *Availability and in-store testing of hearing aid-compatible handset models.* All handset manufacturers and service providers must make their best efforts to make available all hearing aid-compatible handset models that they offer for sale or use to consumers to test, in each retail store owned or operated by the handset manufacturer or service provider. If a handset model is not available in-store for testing, handset manufacturers and service providers must make their best efforts to make the handset model available to the consumer for testing within 48 hours by shipping the handset model either to the store or to the consumer's home. Further, handset manufacturers and service providers must make their best efforts to ensure that all of the hearing aid-compatible handset models that they offer for sale or use will be in the hands of consumers within 48 hours of the consumer ordering the hearing aid-compatible handset model.

(d) [Reserved]

(e) * * *

(4) *Sunsetting the de minimis exceptions.* Beginning [INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], handset manufacturers may no longer claim *de minimis* status under the terms of this section. Beginning [INSERT DATE THIRTY-ONE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], nationwide service providers may no longer claim *de minimis* status under the terms of this section. Beginning [INSERT DATE FORTY-THREE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], non-nationwide service providers may no longer claim *de minimis* status under the terms of this section.

(f) *Labeling and disclosure requirements for hearing aid-compatible handsets.*

* * * * *

(g) *Handset model number designation requirements.* Where a handset manufacturer or service provider makes a physical change to a handset model, the handset model must be given a model number designation distinct from that of the handset model prior to its alteration. A physical change to a handset model is defined as changes to the handset model's hardware or software that causes a variation in the form, features, or capabilities of the handset model as compared to the handset model prior to these alterations.

(1) Handset models recertified as hearing aid-compatible under updated certification standards are not required to be assigned a new model number designation unless the handset model has been physically changed, as defined above, to meet the requirements of the updated certification standard. Handset models being recertified as hearing aid-compatible under updated certification standards must meet all aspects of the updated certification standard. Handset models being recertified as hearing aid-compatible may not be recertified as hearing aid-compatible using parts of two different ANSI standards or distinct certification standards.

(2) Handset manufacturers may assign new handset model number designations to handset models recertified as hearing aid-compatible under updated certification standards that have not undergone any physical changes as defined above, if the handset manufacturer chooses to for its own reasons. Under these circumstances, handset manufacturers and service providers shall not count the handset model more than once for purposes of meeting handset model deployment benchmark requirements regardless of the number of handset model number designations that the handset model has been assigned.

(3) Handset models recertified as hearing aid-compatible under updated certification standards must have the labeling, disclosure, and website posting information related to the handset model updated within 30 days of the updated certification. These updates must indicate that the handset model has been recertified under updated certification standards and explain how this updated certification affects the handset model's operations. These updates must be made regardless of whether the handset model was physically altered to meet the requirements of the updated certification standard.

(h) *Website and record retention requirements.*

* * * * *

(i) * * *

(4) *Form and content requirements.* The Wireless Telecommunications Bureau is delegated authority to approve or prescribe forms, formats, and methods for submission of the reports and certifications in addition to or instead of those required by this section. Further, the Bureau is delegated authority to revise the information that these reports and certifications collect as long as these revisions are consistent with the rules in this section and do not impose additional obligations beyond providing the information that these reports and certifications collect. Any format or content changes the Bureau adopts will be made available on the Bureau's website.

* * * * *

3. Delayed indefinitely, amend § 20.19 by:

- a. Adding new paragraph (b)(3)(iii);
- b. Revising paragraph (f);
- c. Revising paragraph (h), including the heading of paragraph (h); and
- d. Revising paragraph (i) by adding new paragraphs (i)(4) and (i)(5) and redesignating paragraph (i)(4) as paragraph (i)(6).

The revisions and additions read as follows:

§ 20.19 [revised]

(b) * * *

(3) * * *

(iii) As part of the statement required pursuant to § 2.1033 of this chapter, handset manufacturers shall include a sworn declaration consistent with § 1.16 of this chapter verifying: (1) the specific Bluetooth coupling standard included in each handset model to be marketed under the requested

equipment authorization; (2) that each handset model has been tested to ensure compliance with the relevant designated Bluetooth coupling standard; and (3) beginning on *[INSERT DATE FORTY-NINE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, that the included Bluetooth coupling standard meets the definition of hearing aid-compatible in paragraph (a) of this section and the related Bluetooth functionality requirements of paragraph (b)(3)(ii) of this section.

* * * * *

(f) *Labeling and disclosure requirements for hearing aid-compatible handset models.*

(1) *External printed package label.* For all handset models certified as hearing aid-compatible, handset manufacturers and service providers shall ensure that the handset model has an external printed package label that clearly and legibly provides in plain language the following information:

- (i) That the handset model is certified as hearing aid-compatible;
- (ii) Whether or not the handset model meets telecoil or Bluetooth coupling requirements or both requirements and, in the case of Bluetooth coupling requirements, which Bluetooth coupling standard the handset model includes; and
- (ii) The handset model's actual conversational gain with and without hearing aids, if certified under the 2019 ANSI standard, with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band.

(2) *Internal printed package insert or printed handset manual.* For all handset models certified to be hearing aid-compatible, handset manufacturers and service providers shall ensure that included within the handset model's packaging is either a printed package insert or a printed handset manual that provides the following information in a clear and legible format using plain language:

- (i) An explanation of what it means that the handset model is certified as hearing aid-compatible and which ANSI standard was used for certification purposes;
- (ii) An explanation of what acoustic, telecoil, and Bluetooth coupling are and which of these coupling capabilities the handset model includes and, in the case of Bluetooth coupling, which Bluetooth coupling standard the handset model includes;
- (iii) If the handset model was certified under the 2019 ANSI standard, an explanation of the handset model's volume control capabilities, an affirmative statement of the handset model's conversational gain with and without hearing aids, and an explanation of how to turn the handset model's volume control capabilities on and off;
- (iv) An explanation of how to turn each of the handset model's coupling functions on and off and an explanation that by default the handset model comes with its acoustic and volume control functions turned on;
- (v) If the handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. Under these circumstances, the included printed package insert or printed handset manual must include the following disclosure statement:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the handset manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or

exchange policies, consult your service provider or phone retailer.

(3) *Use of digital labeling technology.*

- (i) External printed package labels must be printed and affixed to the outside of the handset model's packaging and contain the information required by paragraph (f)(1) of this section. This information may not be delivered to consumers through the use of digital labeling technology.
- (ii) The information required by paragraph (f)(2) of this section may be delivered to consumers using digital labeling technology, as an alternative to including an internal printed package insert or printed handset manual as long as the handset manufacturer or service provider choosing this option maintains a publicly accessible website where consumers can easily locate the information required by paragraph (f)(2) of this section. Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-Response (QR) code and the related website address where the information required by paragraph (f)(2) of this section can be found. The required information must be presented in a straight-forward fashion using plain language that is easy for consumers to understand. Handset manufacturers and service providers choosing this option must update this information within 30 days of any relevant changes, and they must ensure that they are in full compliance with the website posting requirements of paragraph (h) of this section.

* * * * *

(h) *Website posting requirements.*

(1) Each handset manufacturer and service provider that maintains a publicly accessible website must make available on its website:

- (i) A list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible;
- (ii) For each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements;
- (iii) For each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes;
- (iv) For each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band;
- (v) If a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and
- (vi) A link to the Commission's wireless hearing aid compatibility web page.

(2) Each handset manufacturer and service provider that maintains a publicly accessible website must post to their websites the name of a department or a division within the company that is staffed with knowledgeable employees who can answer consumer questions about the hearing aid compatibility of the handset models that the company offers and related coupling questions. Along with posting the information required by paragraph (h)(1) of this section, handset manufacturers and service providers must post to their publicly accessible websites an email address, mailing address, text number, and a toll free number that consumers can use to contact the knowledgeable company employees. These employees shall respond to consumer inquiries in a fashion consistent with good business practices.

(3) The information on handset manufacturer and service provider publicly accessible websites must

be presented in a straightforward fashion using plain language that is easy for consumers to understand. In addition, this information must be updated within 30 days of any relevant changes, and webpages must include a date stamp allowing consumers to understand how recent the information is that they are viewing.

(i) *Reporting and certification requirements.*

* * * * *

(4) After *[INSERT DATE TWENTY-FIVE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, handset manufacturers shall file FCC Form 855 rather than FCC Form 655 to certify their compliance with the requirements of this section. After this date service providers shall continue to file FCC Form 855 to certify their compliance with the requirements of this section. Handset manufacturers and service providers shall file FCC Form 855 by January 31 of each year and the certification shall cover the previous calendar year from January 1 through December 31. Each certification shall be accurate and provide information that can be verified by the filer's publicly accessible website or, if the filer does not maintain a publicly accessible website, the filer must include an attachment with its certification which contains the information required by paragraph (h)(1) of this section.

(5) The FCC Form 855 that handset manufacturers file, nationwide service providers file after *[INSERT DATE THIRTY-ONE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, and non-nationwide service providers file after *[INSERT DATE FORTY-THREE MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, must include the following information:

- (i) An affirmative statement as to whether the filer is a handset manufacturer, a nationwide service provider, or a non-nationwide service provider;
- (ii) In the case of a handset manufacturer, an affirmative statement as to whether the filer ceased offering handset models during the reporting period or, in the case of a service provider, the filer ceased offering wireless service during the reporting period;
- (iii) An affirmative statement that the filer did not offer for sale or use in the United States non-hearing aid-compatible handset models for the reporting period as required by paragraphs (c)(2), (c)(4), or (c)(6) of this section, as applicable to the filer;
- (iv) The total number of hearing aid-compatible handset models the filer offered for sale or use in the United States for the reporting period;
- (v) The number of these handset models that met applicable telecoil requirements;
- (vi) The number of these handset models that met the applicable Bluetooth coupling requirement and a statement as to whether the Bluetooth coupling technology was a proprietary or non-proprietary implementation, the name of the Bluetooth coupling technology, and a statement as to whether the Bluetooth technology met the requirements of paragraph (b)(3)(ii) of this section;
- (vii) An affirmative statement that all new handset models added during the reporting period met volume control certification requirements as required by paragraphs (c)(2), (c)(4), or (c)(6) of this section, as applicable to the filer;
- (viii) An affirmative statement that the filer was in full compliance with the labeling and disclosure requirements in paragraph (f) of this section;
- (ix) A statement as to whether the filer used digital labeling technology to deliver to consumers the information required by paragraph (f)(2) of this section, as an alternative to including a printed insert or printed handset manual;
- (x) If the filer maintains a publicly accessible website, the filer must include a link to the website showing compliance with paragraph (h) of this section or, if the filer does not maintain a publicly

accessible website, an affirmative statement that the filer does not maintain a publicly accessible website and has included an attachment with its filing showing the information required by paragraph (h)(1) of this section;

- (xi) The name of the signing executive and contact information;
- (xii) The company(ies) covered by the certification;
- (xiii) The FCC Registration Number (FRN); and
- (xiv) The following language:

I am a knowledgeable executive of [company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements.

I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable reporting period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR § 1.16 that the above certification is consistent with 47 CFR § 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

- (xv) If the company selected that it was not in full compliance with this section, an explanation of which wireless hearing aid compatibility requirements it was not in compliance with, when the non-compliance began and (if applicable) ended with respect to each requirement.

(6) *Form and content requirements.* * * *

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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 *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, Notice of Proposed Rulemaking (*100% HAC Notice*) released in December 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *100% HAC Notice*, including the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. The Commission's hearing aid compatibility rules ensure that the millions of Americans with hearing loss have access to the same types of technologically advanced wireless handset models as consumers without hearing loss. Small and other handset manufacturers and service providers are required to make available handset models that meet specified technical criteria for hearing aid compatibility. The Commission issued the *100% HAC Notice* to develop a record relating to a proposal submitted by the Hearing Aid Compatibility (HAC) Task Force on how the Commission can achieve its long term goal of requiring 100% of handset models offered for sale or use in the United States by handset manufacturers and service providers to be certified as hearing aid compatible.

3. The *Report and Order* adopts a 100% hearing aid compatibility requirement that applies to all future wireless handset models offered for sale or use in the United States.⁴ The Commission finds that adopting a 100% hearing aid compatibility requirement is an achievable objective under the factors set forth in section 710(e) of the Communications Act.⁵ As part of this determination, the Commission adopts a more flexible "forward-looking" definition of hearing aid compatibility. More specifically, the Commission adopts the HAC Task Force's expanded definition of hearing aid compatibility, which defines a hearing aid-compatible handset model as: (1) having an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable. The Commission also adopts the HAC Task Force's recommendations on how to define these terms. This updated definition of hearing aid compatibility allows the Commission to adopt a Bluetooth coupling requirement. Under this new requirement, the handset model deployment benchmarks require at least 15% of the total number of handset models that handset manufacturers and service providers will offer for sale or use in the United States to connect to hearing aids through Bluetooth coupling technology as an alternative to, or in addition to telecoil coupling. The 15% Bluetooth coupling requirement means that 85% of the total number of handset models that handset manufacturers and service providers offer for sale or use in the United States must meet applicable telecoil certification requirements. Further, all handset models must meet acoustic coupling requirements and all new handset models that handset manufacturers and service providers add to their handset model portfolios after the applicable transition periods ends must meet volume control certification requirements.

4. Section 710(e) directs the Commission to "use appropriate timetables or benchmarks to the extent necessary: (1) due to technical feasibility, or (2) to ensure the marketability or availability of

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 *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, WT Docket No. 23-388, Notice of Proposed Rulemaking, FCC 23-108 (Dec. 12, 2023) (*100% HAC Notice*).

³ 5 U.S.C. § 604.

⁴ 47 U.S.C. § 610(b)(1)(B).

⁵ *Id.* § 610(e).

new technologies to users.”⁶ Accordingly, the Commission adopts a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to the 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States. These transition periods allow for sufficient time to expand access to hearing aid-compatible handset models, while giving handset manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than into just a certain percentage of future handset models. After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR, Part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exceptions.⁷ In addition to these transition periods, the Commission adopts a 48-month transition period after which handset manufacturers may only meet our new Bluetooth coupling requirement using non-proprietary Bluetooth coupling standards. During the 48-month transition period, handset manufacturers may meet the Bluetooth coupling requirement using proprietary or non-proprietary Bluetooth coupling standards.

5. The *Report and Order* eliminated the *de minimis* exception in section 20.19(e) of the Commission’s hearing aid compatibility rules in a manner consistent with the transition periods that the Commission adopted. This approach follows the Commission’s tentative conclusion in the *100% HAC Notice*. The Commission eliminated the *de minimis* exception because maintaining the exception would be inconsistent with its objective of adopting a 100% hearing aid compatibility requirement. The Commission also adopted certain implementation requirements related to this new 100% hearing aid compatibility requirement, including requirements for hearing aid compatibility settings in handset models and revised labeling, disclosure, website posting, record retention and reporting requirements. Finally, the Commission revised the heading of section 20.19 of its rules from “Hearing aid-compatible mobile handsets” to “Hearing loss compatible wireless handsets” or “HLC” for short.⁸ The Commission made this change to better reflect what the section covers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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.⁹ The Chief Counsel did not file comments in response to the proposed rules in this proceeding.

⁶ *Id.*

⁷ A handset model portfolio refers to all of the handset models that a handset manufacturer or service provider offers for sale or use in the United States. See Appendix B, Final Rules, section 20.19(a); see also *2016 HAC Order*, 31 FCC Rcd at 9346, 9346-47, 9353-54 & n.110, paras. 27, 29, 43 & n.110.

⁸ 47 CFR § 20.19.

⁹ 5 U.S.C. § 604(a)(3).

D. 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 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. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁴ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁵ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁶

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁷ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁸ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the United States reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁹

¹⁰ *Id.* § 604 (a)(4).

¹¹ *Id.* § 601(6).

¹² *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.”

¹³ 15 U.S.C. § 632 (1996).

¹⁴ 5 U.S.C. § 601(3)-(6).

¹⁵ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 601(4).

¹⁸ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁹ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS (continued....)

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁰ United States Census Bureau data from the 2022 Census of Governments²¹ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²² Of this number, there were 36,845 general purpose governments (county,²³ municipal, and town or township²⁴) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁵) with enrollment populations of less than 50,000.²⁶ Accordingly, based on the 2022 United States Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁷

12. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and

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Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

²⁰ 5 U.S.C. § 601(5).

²¹ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

²² See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

²³ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁴ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²⁵ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²⁶ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁷ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

television broadcast and wireless communications equipment.²⁸ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.²⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.³⁰ United States Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.³¹ Of this number, 624 firms had fewer than 250 employees.³² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

13. *Part 15 Handset Manufacturers.* Neither the Commission nor the SBA have developed a small business size standard specifically applicable to unlicensed communications handset manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing³³ is the closest industry with a SBA small business size standard. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.³⁴ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.³⁵ The SBA small business size standard for this industry classifies firms having 1,250 or fewer employees as small.³⁶ United States Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.³⁷ Of this number, 624 firms had fewer than 250 employees.³⁸ Thus, under the SBA size standard the majority of firms in this industry can be considered small.

14. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

²⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

²⁹ *Id.*

³⁰ See 13 CFR § 121.201, NAICS Code 334220.

³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³³ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See 13 CFR § 121.201, NAICS Code 334220.

³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. 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.

communications via the airwaves.³⁹ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁴⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴¹ United States Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁴² Of that number, 2,837 firms employed fewer than 250 employees.⁴³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁴⁴ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁴⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers.⁴⁶ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁴⁷ Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure.⁴⁸ Mobile virtual network operators (MVNOs) are included in this industry.⁴⁹ Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.⁵⁰ United States Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year.⁵¹ Of that number, 1,375 firms operated

³⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁰ *Id.*

⁴¹ See 13 CFR § 121.201; NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁵ *Id.*

⁴⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁵¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

with fewer than 250 employees.⁵² Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. The rule changes adopted by the Commission impose revised reporting, recordkeeping, and other compliance requirements on some small entities, however, these changes are offset by eliminating outdated reporting, record keeping, and other compliance requirements. Rather than requiring small and other handset manufacturers and service providers to continue to certify that a certain percentage of the handset models that they offer must be hearing aid-compatible, they will now have to certify that 100% of the handset models that they offer are hearing aid compatible. Certification will include compliance with acoustic coupling, telecoil, and volume control requirements, as well as the submission of an attestation demonstrating compliance with the Commission's Bluetooth coupling requirement. Handset manufacturers and service providers have already been certifying that their handset model portfolios (i.e., the handsets that a handset manufacturer or service provider offers for sale or use in the United States) include a certain percent of hearing aid-compatible handset models. Therefore, this change to a 100% hearing aid compatibility requirement will not have a significant impact on the certification requirements. Further, the Commission will allow the grandfathering of existing hearing aid-compatible handset models which will ease the transition to the new 100% hearing aid compatibility requirement.

17. The transition periods that the Commission adopted will allow a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which typically include small and rural providers. These transition periods will help small entities transition to the 100% hearing aid compatibility requirement by giving these companies time to adjust their handset model portfolios to meet the new hearing aid compatibility requirements. In addition, the grandfathering rule that the Commission adopted will allow small and other handset manufacturers and service providers to continue offering hearing aid-compatible handset models that they were offering prior to the applicable 100% hearing aid compatibility transition dates ending. Moreover, the adopted transition timeframes reflect real-world realities, and are based on the ability of handset manufacturers to use: (1) the existing 2019 ANSI Standard for acoustic and telecoil certification requirements; (2) the volume control waiver standard; and (3) the flexibility to use their desired Bluetooth coupling technology including the continued use of proprietary Bluetooth standards, during a 48-month transition period to a non-proprietary requirement which the Commission also adopt in the *Report and Order*. The real world reality is that the majority of handset models currently available for sale or use in the United States include some type of Bluetooth coupling technology,⁵³ and already meet the Commission's adopted hearing aid compatibility certification requirements.

18. The Commission revised its handset model labeling requirements by removing outdated requirements and adopting updated requirements that reflect the 100% hearing aid compatibility requirements and certification obligations, and that better serve the interests of consumers. These labeling requirements will allow consumers to have the information that they need to make informed purchasing decisions. The updated labeling and disclosure requirements revise the external printed package label and the internal information that must be included inside a handset model packaging in the form of printed inserts or printed handset manuals. Further, the Commission will allow the use of digital labeling

⁵² *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.

⁵³ HAC Task Force Final Report at 7 (93% handset model compliance for the reporting period of July 1, 2021 to June 30, 2022); Bluetooth SIG Reply at 1, 3 (almost 100% of existing handset models support the use of Bluetooth technology).

technology, including Quick-Response (QR) codes, as an alternative to including printed package inserts and printed handset manuals, as long as handset manufacturers and service providers choosing this option maintain publicly accessible websites. Handset manufacturers and service providers that use digital labeling technology also must update the required information within 30 days of any relevant changes, and must fully comply with all of the Commission website posting requirements adopted in the *Report and Order*.

19. The Commission's adoption of a digital labeling technology option for the information that must be included within a handset model's packaging was at the request of handset manufacturers and service providers. This decision to allow some digital labeling will reduce regulatory burden for small and other entities. The Commission agreed with commenters who stated that digital labeling is a more consumer friendly way to deliver the information that is required to be included in a printed insert or printed handset manual.⁵⁴ Further, the Commission found that digital labeling is less burdensome on handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, making it a more environmentally friendly way of providing information.⁵⁵ The Commission determined to not require handset manufacturers and service providers who choose to use this digital labeling option to also continue to include a printed insert or printed handset manual.⁵⁶ The Commission found such an approach was duplicative and would undercut its findings concerning the benefits of digital labeling.

20. The revised website posting requirements the Commission adopted update and streamline existing requirements and eliminate older and outdated requirements. After the relevant 100% hearing aid compatibility transition period expires, small and other handset manufacturers and service providers are required to provide certain information on their publicly accessible websites. Specifically, handset manufacturers and service providers must post: (1) a list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and (6) a link to the Commission's wireless hearing aid compatibility web page.⁵⁷

21. The Commission also eliminated certain record retention requirements related to handset models no longer offered for sale or use in the United States. Since all handset models will be 100% hearing aid-compatible after the relevant transition period ends, the Commission further eliminated the posting and record retention requirements related to non-hearing aid-compatible handset models. These changes reduce regulatory burden and cost, and aid small entities by ensuring that only pertinent handset model information is required to be posted on publicly accessible websites. To further streamline reporting and certification requirements for handset manufacturers, and consistent with the Commission's

⁵⁴ CTA Reply at 5.

⁵⁵ Samsung Comments at 12, 14.

⁵⁶ Accessibility Advocates Comments at 23.

⁵⁷ See FCC, Hearing Aid Compatible Mobile Handsets, <https://www.fcc.gov/hearing-aid-compatibility-wireless-telephones> (last updated Jan. 26, 2024).

actions in 2018 to reduce regulatory burdens for service providers,⁵⁸ after the transition period has ended the Commission requires handset manufacturers to file FCC Form 855 for compliance purposes, and eliminates the requirement that they file FCC Form 655. In conjunction with the change to the handset manufacturer reporting period to cover the period of January 1 to December 31 of the previously calendar year, the Commission aligned the FCC Form 855 filing requirements for small and other handset manufacturers and service providers to reflect the 100% hearing aid compatibility requirement and related requirements adopted in the *Report and Order*. Pursuant to FCC Form 855 filing requirements handset manufacturers, like service providers, are required to have a knowledgeable executive sign the form, and to certify under penalty of perjury compliance with the Commission's hearing aid compatibility requirements for the relevant reporting period.⁵⁹

22. In addition to the information the Commission required handset manufacturers and service providers to post to their publicly accessible websites, the Commission adopted requirements for handset manufacturers and service providers to post point-of-contact information for consumers. Specifically, handset manufacturers and service providers must post on their publicly accessible websites: (1) the name of a department or a division that is staffed with employees knowledgeable about the hearing aid compatibility of the handset models that they offer; and (2) an email address, mailing address, text number, and a toll free number that consumers can use to contact these employees. Handset manufacturers and service providers are also required to respond to consumer inquiries relating to handset hearing aid compatibility in a timely fashion, and in a manner consistent with the Competitive Telecommunications Industry Association's (CTIA) Consumer Code for Wireless Service.⁶⁰

23. Finally, 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 with the adopted rules. However, while the Commission cannot quantify the cost of compliance with the rule changes it adopted, the Commission believes the changes will not have a significant effect on costs and burdens for small entities because (1) many of the revisions to the hearing aid compatibility rules adopted in the *Report and Order* are based in part on a consensus report resulting from the collaborative efforts of members of the HAC Task Force⁶¹ on whether, and how the Commission could achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States;⁶² (2) a significant number of the handset models available for sale or use in the United States already meet hearing aid compatibility certification requirements⁶³ and include some form of Bluetooth coupling technology;⁶⁴ (3) handset manufacturers and

⁵⁸ See *100% HAC Notice* at 35, para. 121.

⁵⁹ 47 CFR § 20.19(i)(1).

⁶⁰ See CTIA, Wireless Industry Commitment, Consumer Code for Wireless Service at Section 8, Provide Ready Access To Customer Service, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited July 22, 2024).

⁶¹ The HAC Task Force is an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers, convened to report to the Commission on whether requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable objective. The HAC Task Force's Final Report represents consensus recommendations for how the Commission can achieve this objective.

⁶² Hearing Aid Compatibility Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022) (HAC Task Force Final Report); see also *2016 HAC Order*, 31 FCC Rcd at 9337, para. 3.

⁶³ See FCC, Filing Hearing Aid Compatibility Reports and Certifications, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Sept. 26, 2024) (setting forth the latest handset manufacturer and service provider compliance reports and certifications).

service providers were provided the flexibility to continue to use, in part, proprietary Bluetooth technology under the Bluetooth coupling requirement and 48-months to comply with a non-proprietary requirement; (4) the reasonable transition period for compliance with our 100% hearing aid compatibility requirement providing 24-months for handset manufacturers, 30-months for nationwide providers and 42-months for non-nationwide providers (typically small and rural providers); and (5) in updating the website posting, reporting and recordkeeping requirements the Commission also removed outdated requirements.

24. The Commission carefully considered the burden and cost associated with its revised reporting and website reporting requirements and is only requiring information that is needed to ensure compliance with the Commission's new 100% hearing aid compatibility requirement and to ensure that consumers, especially those with hearing loss, have the information that they need to make informed purchasing decisions. In situations where the Commission imposed new requirements, such as point-of-contact information, the Commission removed other requirements that were no longer relevant. For instance, the Commission eliminated the posting and record retention requirements related to non-hearing aid-compatible handset models, as well as information about hearing aid-compatible handset models that are no longer offered. On balance, any burdens or costs incurred by small entities as well as other handset manufacturers and service providers will be offset by the elimination of other existing burdens and costs.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. 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."⁶⁵

26. The Commission considered specific steps it could take and alternatives to the rules it adopted that would minimize potential economic impact on small entities that might be affected by the rule changes. Many of the rule changes adopted in the *Report and Order* are consistent with the recommendations of the HAC Task Force in full, or in part with some modification based on evidence in the record. In determining the transition period for the 100% hearing aid compatibility requirement for example, the Commission considered the HAC Task Force's recommendation of a 48-month (handset manufacturers) and 60-month (service providers) transition period but instead adopted a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to the new 100% hearing aid compatibility requirement. These transition periods are in keeping with previous transition periods the Commission has adopted when implementing new technical standards. Previously the Commission found that the appropriate balance between product development cycles for handset manufacturers and the needs of consumers with hearing loss to receive the benefits of a new technical standard are met with a 24-month transition period.⁶⁶ While the adopted transition periods are shorter than those recommended by the HAC Task Force, these transition periods are reasonable and will minimize the economic impact for small manufacturers and small service providers since they will not have to immediately comply with the revised standards in the short term. These entities will have time to bring their handset model portfolios into compliance with the Commission's new 100% hearing aid compatibility requirement. Further, these entities will be able to continue to offer handset models

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⁶⁴ HAC Task Force Final Report at 7 (93% handset model compliance for the reporting period of July 1, 2021 to June 30, 2022); Bluetooth SIG Reply at 1, 3 (almost 100% of existing handset models support the use of Bluetooth technology).

⁶⁵ 5 U.S.C. § 604(a)(6).

⁶⁶ 100% HAC Notice at 27, para. 90.

certified under older hearing aid compatibility standards as long as they were offering these handset models prior to the expiration of the relevant transition period. In particular, the 42-month transition period will benefit non-nationwide and rural service providers, which are usually small entities.

27. During the 48-month transition period before the non-proprietary Bluetooth coupling requirement takes effect small and other handset manufacturers and service providers can continue use proprietary Bluetooth coupling technology. Further, even after the transition period ends handset manufacturers and service providers can continue to use proprietary Bluetooth coupling technology as long as they ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that complies with requirements adopted in the *Report and Order*. All of the adopted transition periods aid consumers with hearing loss by allowing them access to new hearing aid-compatible handset models as soon as possible without negatively impacting product development cycles for handset manufacturers and service providers.

28. To limit any potential burdens regarding the impact of the 100% hearing aid compatibility transition, the Commission is allowing handset manufacturers and service providers to continue to offer handset models that are already certified as hearing aid-compatible as part of their handset model portfolios. Small and other handset manufacturers and service providers will be able to meet the 100% handset model deployment benchmark using grandfathered handset models that have been certified as hearing aid-compatible, as long as the handset models were being offered for sale or use in the United States prior to the ending of the applicable transition period. This decision minimizes the burdens associated with implementing the new standard for small entities because they will not have to recertify previously certified handset models. In developing this rule, the Commission considered discontinuing grandfathering, but ultimately kept the rule in order to minimize costs and burdens on small and other handset manufacturers and service providers.

29. As proposed in the *100% HAC Notice*,⁶⁷ the Commission considered but declined to institute a recommendation by the HAC Task Force for a “90 Day Shot Clock” to resolve hearing aid compatibility waiver requests.⁶⁸ While on its face this recommendation may appear to offer a path for the resolution of potential future waiver requests or deployment of new hearing aid compatibility technologies in a timely manner for small and other entities, the Commission does not believe such action is necessary to prevent delay and could have an adverse effect for small and other entities and the public. The Commission observed that extremely technical questions arise in hearing aid compatibility proceedings, and adopting a 90-day shot clock could constrain public participation, the ability of the Commission to develop the necessary record evidence to resolve a matter, and the ability of the Commission staff to facilitate consensus solutions that serve the interest of consumers with hearing loss and the industry. The Commission also observed that the transition periods that it adopts when adopting new hearing aid compatibility requirements mitigates against the need for waivers. The Commission provides time for handset manufacturers and service providers to adjust to the new requirements.

30. The Commission also decided to reduce regulatory burden and cost by streamlining the reporting requirements for small and other handset manufacturers. By eliminating their filing of FCC Form 655 for reporting purposes, the Commission synchronized the filing requirements of small and other handset manufacturers with the filing requirements of service providers. Based on the Commission’s estimates that it takes 30 minutes to complete FCC Form 855 and two and half hours to complete FCC Form 655, this rule change will minimize the economic impact for small handset manufacturer.⁶⁹ Small

⁶⁷ *100% HAC Notice* at 41, paras. 145-146.

⁶⁸ HAC Task Force Final Report at ii, 30-31.

⁶⁹ See FCC Form 655: Hearing Aid Compatibility Status Reporting Instructions For Device Manufacturers at 11; FCC Form 855: Hearing Aid Compatibility Certification Instructions For Service Providers at 8. These forms and instructions can be found here: <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-3> (last updated Dec. 10, 2021).

handset manufacturers will no longer have to provide the detailed handset model information that they previously had to provide to demonstrate compliance with the hearing aid compatibility rules. Instead, after the applicable 100% hearing aid compatibility transition period ends small handset manufacturers will only have to certify their compliance with the relevant rules. The Commission adopted this change in order to balance the potential economic impact and burdens that small entity manufacturers and service providers might face in light of the 100% hearing aid compatibility requirement with the need to ensure that consumers with hearing loss can purchase the same handset models that consumer without hearing loss can purchase.

31. Further reducing regulatory burdens for small entities, the revised labeling and disclosure requirements the Commission adopted in the *Report and Order* allow handset manufacturers and service providers to forgo the regulatory requirements to provide printed inserts or printed handset manuals by allowing them the option to use digital labeling to deliver this information to consumers. Digital labeling is less burdensome for handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, which is a more environmentally friendly way of providing information.⁷⁰ The Commission also reduced the administrative burdens and the economic impact for small entities by eliminating several website posting and record retention requirements associated with handsets models.

G. Report to Congress

32. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁷¹ 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.⁷²

⁷⁰ Samsung Comments at 12, 14.

⁷¹ See 5 U.S.C. § 801(a)(1)(A).

⁷² See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, WT Docket No. 23-388,
Report & Order (October 17, 2024)

Hearing loss is a big deal. In the United States, more than 48 million people have some form of hearing difficulty. Among older adults it is especially prevalent, and it is also very common among veterans. So the chances are you know someone impacted by hearing loss.

The good news is that hearing aids and other technologies that can help those with hearing loss are more advanced, accessible, and affordable than ever before. Two years ago, the Food and Drug Administration issued a landmark ruling, making it possible for the first time for hearing aids to be sold over-the-counter without a prescription. Just last month, the FDA approved the use of new technology that will allow popular wireless headphones to be used as hearing aids. These actions are powerful because they are expanding consumer choice and lowering consumer cost.

So I believe now is the right time for the Federal Communications Commission to build on these efforts and finally deliver on a promise it made nearly a decade ago. Back in 2016, the agency adopted a collaborative plan to improve access to mobile wireless handsets that are compatible with hearing aids. The goal was to make them widely available, so that people with hearing loss could use their phones without interference to their hearing aids or unwanted noise during conversations. Today, we take the final step in that plan. We ensure that all mobile wireless handsets available in the United States will be hearing aid compatible. That means going forward, 100 percent of wireless phones will be capable of working seamlessly with hearing aids. Even better, we are improving the way these devices will work with hearing aids in the future. We clear the way for the use of new Bluetooth technologies that will help the growing number of new hearing aid options connect to mobile phones. We also adopt a volume control requirement for handsets that will benefit all consumers with hearing loss, even those who do not use hearing aids.

We are reaching this 100 percent milestone because a lot of stakeholders worked with us to build consensus. In fact, many carriers and manufacturers have already contributed to this effort with a majority of handsets on the market today compatible with hearing aids. But today we finish the job.

To get to this point, we relied on the work of the Hearing Aid Compatibility Task Force, which brought together the expertise of equipment manufacturers, wireless carriers, research institutions and advocates for those with hearing loss to help make this happen. I am grateful for the knowledge and persistence of all its members, including Linda Kozma-Spytek and Lise Hamlin who join us today. I am also grateful to the staff who worked on this initiative, including Joel Taubenblatt, Barbara Esbin, John Lockwood, Kimia Nikseresht, Garnet Hanly, Susannah Larson, Eli Johnson, Jennifer Salhus, and Saurbh Chhabra from the Wireless Telecommunications Bureau; Robert Aldrich, Stephen Wang, Joshua Mendelsohn and Michael Scott from the Consumer and Governmental Affairs Bureau; Ryan McDonald, Regina Brown, Neal McNeil, and Pamela Hairston from the Enforcement Bureau; Dana Shaffer, Jamison Prime, Jim Szeliga, Justin Rison, Reza Biazaran, and Jamie Coleman from the Office of Engineering and Technology; Donald Stockdale, Catherine Matraves, Kenneth Lynch, Weiren Wang, Molly Schwartz, Pramesh Jobanputra, Zaira Gonzalez, and Craig Stroup from the Office of Economics and Analytics; Douglas Klein, Anjali Singh, Bill Huber, and David Konczal from the Office of General Counsel; and Michael Gussow and Chana Wilkerson From the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, WT Docket No. 23-388,
Report & Order (October 17, 2024)

As I said when I voted for last year's hearing aid compatibility Notice of Proposed Rulemaking: "everyone in America deserves access to modern communications." With this Report and Order, we're taking an important step toward ensuring that vision is a reality for the millions of Americans who depend on hearing aids.

For years the Commission has been working to make sure every single smartphone sold in America can be used with a hearing aid – 100% compatibility. Today that goal is finally within reach. By adopting a 100% hearing aid compatibility requirement to all future wireless handsets, we are delivering meaningful choice to the 48 million Americans with hearing loss. This item is the result of years of collaboration among industry, consumer groups, standards organizations, and of course government. I want to extend a particular thanks to the staff of the Wireless Telecommunications Bureau who worked tirelessly on this item. It has my full support.



PUBLIC NOTICE

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COMMISSION IDENTIFIES TENTATIVE SELECTEES IN 93 GROUPS OF MUTUALLY EXCLUSIVE APPLICATIONS SUBMITTED IN THE DECEMBER 2023, LPFM FILING WINDOW

ANNOUNCES A 30-DAY PETITION TO DENY PERIOD, 90-DAY PERIOD TO FILE VOLUNTARY TIME-SHARE PROPOSALS, AND A 60-DAY PERIOD TO FILE MAJOR CHANGE AMENDMENTS

By the Commission:

By this Public Notice, the Commission considers 93 groups of mutually exclusive (MX) applications filed in the December 2023, filing window for Low Power FM (LPFM) new station construction permits (LPFM Applications)¹ and uses a point system to tentatively select applications for grant.² We designate the single applicant with the highest point total or the applicants tied for the highest point total from each mutually exclusive group (MX group) as the tentative selectee(s), and they are identified, in **bold**, in Attachment A. Upon the release of this Public Notice, the Commission initiates a 30-day period for filing petitions to deny against the tentative selectee applications, a 90-day period for the filing of voluntary time-share proposals (point-aggregation requests), and a 60-day period for filing major change amendments.

Mutually Exclusive Groups. Conflicting LPFM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are mutually exclusive to at least one other application in the group.³ In the case of proposals for LPFM station construction permits, when the distance between the facilities proposed in two LPFM Applications does not meet the minimum distance separation requirements

¹ Each application in MX Group 1 through MX Group 109 was filed during the December 2023, LPFM filing window (the LPFM Window). See *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, 38 FCC Rcd 6660 (MB 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Media Bureau (Bureau) subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

² See 47 CFR § 73.872. In this Public Notice the Commission uses the point system to compare 228 applications from 93 MX Groups.

³ The Bureau received 1,336 LPFM Applications. The Bureau previously identified over 730 technically acceptable LPFM Applications, which are not in conflict with any other application, *i.e.*, singleton applications, and put these applications on Public Notices announcing them as “accepted for filing.” The Bureau has granted more than 635 of those singleton LPFM Applications.

specified in section 73.807 of our rules,⁴ the applications are treated as mutually exclusive. On March 15, 2024, the Bureau released a Public Notice to (1) identify by group all of the mutually exclusive LPFM Applications, and (2) announce a 60-day period, until May 14, 2024, for mutually exclusive applicants to enter into and file settlement agreements and/or to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the LPFM Window.⁵

This Public Notice includes mutually exclusive LPFM Applications for which no amendment, settlement, or time-share agreement was timely filed. When conflicts remain, the Commission applies the LPFM point system to select among the mutually exclusive applications.⁶

Point System Selection Criteria. The Commission compares mutually exclusive groups of LPFM applications under the point system set forth in section 73.872 of the Commission's rules (the Rules).⁷ The LPFM point system awards a maximum of six merit points, based on six criteria, with one point awarded under each criterion: (1) established community presence of at least two years; (2) commitment to originate local programming; (3) commitment to maintain a main studio; (4) commitment to originate local programming and to maintain a main studio; (5) diversity of ownership; and (6) Tribal applicants serving Tribal Lands.⁸ These criteria, along with documentation which must have been timely submitted to support point claims, are described in more detail below.

1. **Established Community Presence.** The Commission awards one point to an applicant that has had an established community presence, for a period of at least two years immediately prior to the filing of the LPFM Application, in the community that it proposes to serve. To qualify for this point, a nonprofit educational organization applicant must be able to certify that, during the two years prior to filing the LPFM Application, (a) it has existed as a nonprofit educational organization, and (b) it has been physically headquartered, has had a campus, or has had 75% of its governing board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside the top 50 urban markets, of the coordinates of the proposed transmitting antenna.⁹ A nonprofit educational organization awarded a point for this criterion must have submitted evidence of its qualifications in an application exhibit.¹⁰ Specifically, the applicant must have demonstrated the date it was formed and the

⁴ 47 CFR § 73.807.

⁵ See *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the December 2023, LPFM Filing Window; Opens Window To Accept Settlements and Technical Amendments*, Public Notice, DA 24-256 (MB Mar. 15, 2024) (*Settlement Notice*); see also *Media Bureau Provides Further Guidance on Settlement Window for Mutually Exclusive Applications Submitted in the December 2023, LPFM Filing Window*, Public Notice, DA 24-288 (MB Mar. 22, 2024) (clarifying that MX applicants may also submit time-share agreements to resolve conflicts).

⁶ See 47 CFR § 73.872; see also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2260-64 (2000); *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19246-47 (2000); *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15459-15471 (2012) (*Sixth Report and Order*); *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order*), *recon. dismissed and denied*, Order on Reconsideration, 35 FCC Rcd 10180 (2020) (amending rules and procedures for filing LPFM applications and selecting and licensing competing LPFM applications).

⁷ 47 CFR § 73.872.

⁸ 47 CFR § 73.872(b).

⁹ See 47 CFR §§ 73.872(b)(1); 73.853(b)(1)-(2). For this LPFM Window, nonprofit educational organizations are considered "established" if they have operated as local entities since December 15, 2021, *i.e.*, for at least two years prior to the December 15, 2023, close of the LPFM Window.

¹⁰ See 47 CFR §§ 73.872(b)(1); 73.853(b)(1)-(2).

location of the applicant's headquarters, campus, or governing board members' residence during the two years prior to filing the LPFM Application.¹¹ While there is some flexibility in the type of documentation a nonprofit educational organization applicant may provide, we do not award the point to an applicant that did not timely submit the required documentation.¹²

A Tribal applicant seeking the established community presence point need only certify that it is a Tribe and that its Tribal Lands are within the service area of the proposed LPFM station; or that it is a Tribal organization whose controlling Tribe or Tribes has its/their Tribal Lands within the service area of the proposed LPFM station.¹³ Tribal organizations created by a Tribe to apply for a LPFM construction permit are not required to have been in existence for two years.¹⁴ A public safety radio applicant must have been able to certify that during the two years prior to the filing of its LPFM Application it had jurisdiction within the service area of the proposed LPFM station.¹⁵

2. Local Program Origination. The Commission awards one point to an applicant that pledged to originate locally at least eight hours of programming per day.¹⁶ Locally originated programming is programming produced by the licensee within ten miles of the coordinates of the proposed transmitting antenna site.¹⁷ Such programming may include licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical performances at a local studio or festival, whether recorded or live.¹⁸

3. Main Studio. The Commission awards one point to an applicant that pledges to maintain a publicly accessible main studio that has local origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the station's proposed transmitting antenna site for applicants in the top 50 urban markets and within 32.1 km (20 miles) for applicants outside the top 50 urban markets.¹⁹ To be awarded the main studio point, the applicant must have specified the proposed address and telephone number for the proposed main studio in the Form 2100, Schedule 318 (Schedule 318) at the time of filing the LPFM Application.²⁰

4. Local Program Origination and Main Studio. The Commission awards one additional point to an applicant that certified that it qualifies for one point under both the local program origination and the main studio criteria described in (2) and (3) above.²¹

¹¹ See *Procedures Public Notice*, 38 FCC Rcd at 6668; Instructions – Form 2100, Schedule 318 – Low Power FM Construction Permit Application (LPFM Application Instructions) at 12. Such evidence may consist of copies of corporate charters, articles of incorporation, association, or partnership, bylaws, or other written instruments filed with the appropriate governmental agency (e.g., Secretary of State) documenting the applicant's period of existence. *Id.*

¹² See 47 CFR § 73.872(b)(1); *Procedures Public Notice*, 38 FCC Rcd at 6670 (cautioning that “an applicant submitting no timely documentation at all cannot be found to have made a valid certification and will not receive the claimed points.”); see also *infra* note 34.

¹³ See 47 CFR §§ 73.872(b)(1); 73.853(b)(4); LPFM Application Instructions at 12; *Sixth Report and Order*, 27 FCC Rcd at 15454.

¹⁴ See *Procedures Public Notice*, 38 FCC Rcd at 6668; LPFM Application Instructions at 12..

¹⁵ See 47 CFR §§ 73.872(b)(1); 73.853(b)(3); LPFM Application Instructions at 12

¹⁶ 47 CFR § 73.872(b)(2).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 47 CFR § 73.872(b)(3).

²⁰ *Id.*

5. Diversity of Ownership. The Commission awards one point for diversity of ownership (the “new entrant” point) to an applicant that can certify that it holds no attributable interests in any other broadcast station.²²

Divestiture Pledges. Any applicant, including a national organization, however, can qualify for a new entrant point if it submitted in its LPFM Application a commitment to divest all of its existing media interests (both owned and attributable).²³ The divestiture pledge must have been submitted with the application by the close of the LPFM Window.²⁴ The applicant, however, was not required to complete the pledged divestiture by the close of the LPFM Window. Rather, if the construction permit is awarded based on points, the actual divestiture must be completed by the time the new LPFM station commences program test operations.²⁵

6. Tribal Applicants Serving Tribal Lands. The Commission awards one point to a Tribal Applicant proposing to locate its transmitting antenna site on its “Tribal Lands,” as defined in section 73.7000 of the rules.²⁶

Point System Review Process. The LPFM Application is certification-based, but requires applicants to document their claims by submitting supporting information to the Commission for some criteria. The Commission’s comparative review of MX applications is based on applicant-provided information. The Commission relies on the certifications and additional documentation and/or information submitted by the applicant for verification and support for the claimed points.²⁷

Applicants were required to report their comparative qualifications as of the date of the filing of an LPFM Application. Any changes made thereafter may potentially diminish, but cannot enhance, an

(Continued from previous page) —————

²¹ 47 CFR § 73.872(b)(4).

²² 47 CFR § 73.872(b)(5). Although a broadcast interest of a national organization will not be attributed to the local chapter if the local chapter “is separately incorporated and has a distinct local presence and mission” (47 CFR § 73.858(b)), “local chapters” of larger organizations that hold broadcast interests do not qualify for a “new entrant” point. *See Sixth Report and Order*, 27 FCC Rcd at 15459, para. 160 (broadcast interest of parent organization will be considered attributable for diversity purposes). Any broadcast interests held by the “parent” organization are considered attributable for the purposes of this criterion only. *Id.* Similarly, although a college or university with non-student run broadcast interests may apply for a student-run LPFM station (47 CFR § 73.860(d)), the broadcast interests of the university or college are attributable for purposes of the “new entrant” point. *See, e.g., Sixth Report and Order*, 27 FCC Rcd at 15459, para. 160. Finally, although a director of an LPFM applicant may hold otherwise attributable interests in a broadcast licensee or media entity without making the LPFM applicant ineligible for a license, provided that the director is recused from any matters affecting the LPFM station (47 CFR § 73.858(a)), the director’s broadcast interests are still considered attributable to the LPFM applicant for the purpose of the “new entrant” point. *See, e.g., Sixth Report and Order*, 27 FCC Rcd at 15459, para. 160.

²³ *See, e.g., Creation of Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, n.26 (2013).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 CFR § 73.872(b)(6); *see also* 47 CFR § 73.853(c) (defining a “Tribal Applicant” as a “Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes”); 47 CFR § 73.7000.

²⁷ For example, the Commission has verified that an applicant claiming a point for established community presence has (1) submitted the requisite documentation to support the claim, and (2) the documentation confirms the applicant qualifies for a point for established community presence. For point claims which do not require an applicant to submit supporting documentation, the Commission generally relies on the certifications and does not independently confirm the accuracy during the review process.

applicant's comparative position.²⁸ Accordingly, amendments that were filed after the close of the LPFM Window and improved an applicant's comparative position have not been considered for purposes of the point system.²⁹ Amendments that adversely affected an applicant's comparative position have been considered.³⁰

Point System Analysis. In our application of the point system to the LPFM Applications, we have generally awarded the number of points claimed by each applicant in its LPFM Application. For the following reasons, however, we have denied an applicant's point claim and adjusted the points of such applicants downward.³¹

Established Community Presence.

Untimely Supporting Documentation. Each applicant claiming a point for established community presence was required to submit evidence of its qualifications at the time of filing the LPFM Application.³² We cannot award points which require the applicant to submit documentation or additional information, but which are not supported with any such timely submitted documentation.³³ Accordingly, in three applications, we have denied the established community presence point because the required documentation was submitted as an amendment subsequent to the close of the LPFM Window.³⁴

Insufficient Documentation. While there is flexibility in the type of documentation a nonprofit educational organization applicant may provide to claim a point for established community presence, we have rejected 13 claims where a nonprofit educational organization applicant certifies that it qualifies for

²⁸ See 47 CFR § 73.871(b) ("Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window."); *Procedures Public Notice*, 38 FCC Rcd at 6671; LPFM Application Instructions at 11. Applicants were, however, permitted to amend and supplement their comparative claims prior to the close of the LPFM Window.

²⁹ For example, if an applicant certified that it does not qualify for a point under one of the point system criterion by answering "No" to one of the questions in the "Point Systems Factors" Section of the LPFM Application, it cannot, after the close of the window, amend its application to respond "Yes" to that question. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application. See *Procedures Public Notice*, 38 FCC Rcd at 6670; LPFM Application Instructions at 11; see also *Comparative Consideration of Six Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 24-12 (Jan. 24, 2024) at para. 66 ("an applicant that fails to timely certify that it qualified for points, despite submission of related exhibits, cannot amend its application to certify eligibility after the filing deadline").

³⁰ For example, in MX Group 31, we have adjusted one applicant's points downward after the applicant filed an amendment to certify that it did not, as it initially certified, qualify for a point for established community presence. See Application File No. 0000232594. Similarly, an LPFM applicant may lose claimed points, such as the new entrant credit, as a result of changes made after the application filing.

³¹ Conversely, we have found that each applicant awarded an established community presence or main studio point provided sufficient support for its certification at the time it initially filed its application.

³² LPFM Application Instructions at 12; *Procedures Public Notice*, 38 FCC Rcd at 6668, 6670 (cautioning applicants that "the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits" and reminding applicants to "review their supporting documentation thoroughly before filing").

³³ Applicants must have submitted the requisite documentation prior to the close of the LPFM Window. The Commission does not consider documentation to support a claimed comparative point if it is submitted in a post-window amendment. See 47 CFR § 73.871(b) ("Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window.").

³⁴ See MX Group 9, Application File No. 0000231798; MX Group 49, Application File No. 0000232640; and MX Group 68, Application File No. 0000233106.

a point for established community presence, but fails to submit any documentation, or sufficient and concrete documentation,³⁵ to verify its period of existence and/or local qualifications.³⁶

Less than Two Years Established and/or Local. To receive a point for established community presence, a nonprofit educational organization applicant must have been established and operating as a local entity since, at a minimum, December 15, 2021, *i.e.*, for at least two years prior to the December 15, 2023, close of the LPFM Window.³⁷ In 21 applications, we denied points where an applicant's own documentation contradicts its certification that it is eligible for an established community presence point.³⁸ Specifically, in each of these applications, the applicant provides no evidence to verify that it has been local and established for at least the requisite two years. Rather, each applicant's documentation illustrates that it has been in existence and/or local for *less* than two years prior to the December 15, 2023, LPFM Application deadline.

Diversity of Ownership and Tribal Points. We have rejected one claim where an applicant certified that it is eligible for a point for diversity of ownership, but failed to satisfy this criterion.³⁹ Finally, in ten applications, we have denied claims where an applicant certified that it qualifies for a point

³⁵ See, e.g., *Procedures Public Notice*, 38 FCC Rcd at 6668; LPFM Application Instructions at 12 (explaining the documentation an applicant must provide to support an established community presence point claim).

³⁶ See MX Group 1, Application File No. 0000231871; MX Group 25, Application File No. 0000231731; MX Group 46, Application File No. 0000233187; MX Group 47, Application File Nos. 0000231667, 0000231808, and 0000232837; MX Group 51, Application File No. 0000231587; MX Group 52, Application File No. 0000232034; MX Group 61, Application File No. 0000231724; MX Group 62, Application File Nos. 0000232171 and 0000233032; MX Group 66, Application File No. 0000232004; and MX Group 80, Application File No. 0000232881.

³⁷ See 47 CFR § 73.872(b)(1).

³⁸ See MX Group 14, Application File No. 0000232943 (articles of incorporation, dated November 2023); MX Group 17, Application File No. 0000232614 (articles of incorporation, dated August 2023); MX Group 33, Application File No. 0000232749 (Florida Secretary of State document, showing effective date of January 2022); MX Group 34, Application File No. 0000232571 (articles of incorporation, dated October 2022); MX Group 37, Application File No. 0000231710 (certificate of incorporation, dated June 2023); MX Group 47, Application File No. 0000232099 (date of organization, January 2022); MX Group 49, Application File No. 0000231820 (date of incorporation, December 28, 2021); MX Group 50, Application File No. 0000232193 (date of incorporation, December 2022); MX Group 53, Application File No. 0000233052 (registered for local business, June 2022); MX Group 57, Application File No. 0000231478 (certificate of formation, October 2023); MX Group 60, Application File Nos. 0000232973 (certificate of formation, dated November 2022) and 0000232896 (certificate of incorporation, dated December 28, 2021); MX Group 61, Application File No. 0000231214 (certificate of formation, September 2022); MX Group 75, Application File No. 0000232333 (articles of incorporation, dated September 2023); MX Group 82, Application File No. 0000231733 (articles of incorporation, dated January 2022); MX Group 89, Application File No. 0000232933 (charter, dated December 2023); MX Group 91, Application File No. 0000232040 (certificate of formation, dated November 2023); MX Group 95, Application File No. 0000232561 (certificate of formation, October 2023); MX Group 99, Application File No. 0000232111 (certificate of formation, dated November 2023); MX Group 108, Application File No. 0000232717 (certificate of formation, dated December 2023); and MX Group 109, Application File No. 0000233102 (certificate of formation, dated December 2023).

³⁹ See MX Group 1, Application File No. 0000231871. The applicant, Tripp, LLC, is the licensee of FM translator station W252EK, Cullman, Alabama, and neglects to pledge to divest its FM translator station upon commencement of operations of the new LPFM station. See 47 CFR § 73.860(d) (providing that “a party with an attributable interest in a broadcast radio station must divest such interest prior to commencement of operations of an LPFM station in which a party also holds an interest”); LPFM Application Instructions at 9-10 (explaining the ownership restrictions and divestiture requirements). Accordingly, Tripp, LLC does not qualify for a point for diversity of ownership.

as a Tribal applicant, but submitted no evidence to justify its claim and negated its claim elsewhere in the LPFM Application.⁴⁰

Attachment A – MX Group Point Totals. Attachment A lists, by group number and state, each of the applicants in the mutually exclusive groups analyzed in this Public Notice. The Commission reviewed each listed application pursuant to the LPFM point system comparative process and awarded each applicant a maximum of six merit points applying the criteria discussed above. Attachment A identifies, by applicant name and number of points, the tentative selectee(s) in each MX group. The tentative selectees are identified in **bold**.⁴¹

In cases where an applicant claimed points, but failed to satisfy the respective requirements for receipt of such points, Attachment A lists the points claimed followed in parenthesis by the points credited. For example, an applicant that claimed a point for established community presence, but failed to submit the requisite documentation to support its claim would have the notation 1(0) in the established local applicant column, *i.e.*, it claimed one point but received none. A note “no exhibit” or “defective exhibit” in the Notes column would indicate that the applicant did not support its established community presence claim, either because it submitted no exhibit or because an exhibit was deemed defective for lack of the most basic information necessary. Similarly, a note of “untimely exhibit” indicates the required documentation was submitted after the close of the LPFM Window; a note of “less than 2 years established” indicates the applicant did not receive a point for established community presence because the supporting documentation reveals that the applicant was not in existence for at least two years prior to the filing of the LPFM Application.

The Notes section is also used to describe certain application characteristics. For example, the note “Divest Pledge” is used to identify an applicant that pledged to divest its media interests before the commencement of operation of its new LPFM station.⁴² The note “TIME SHARE” identifies an MX Group where we have identified a tie for the highest point total and where the applicants are subject to the voluntary and involuntary time-sharing procedures described below.

Tied Applicants: Voluntary and Involuntary Time-Sharing. Applying the point system to the LPFM Applications resulted in a tie for the highest point total among several applicants in several MX Groups. Once we have established a tie for any MX Group through our point analysis, we delegate to the

⁴⁰ See MX Group 10, Application File No. 0000232916; MX Group 25, Application File No. 0000231731; MX Group 26, Application File No. 0000232039; MX Group 39, Application File No. 0000233088; MX Group 49, Application File No. 0000231820; MX Group 60, Application File No. 0000232973; MX Group 61, Application File No. 0000232214; MX Group 63, Application File No. 0000233065; MX Group 82, Application File No. 0000231733; and MX Group 88, Application File No. 0000232705. In each case, the applicant conversely certifies that it is a nonprofit educational organization applicant, not a Tribal applicant. See LPFM Application at Legal Certifications Section, Eligibility question (certifying that applicant is eligible as a nonprofit educational organization). Each applicant was required to check only one of three buttons to indicate the category under which it is eligible to hold an LPFM license: (1) nonprofit educational organizations, (2) tribes and tribal organizations, or (3) public safety radio service. See LPFM Application Instructions at 8.

⁴¹ Each tentative selectee application is accepted for filing, and the 30-day petition to deny period commences upon release of this public notice.

⁴² See MX Group 56, Application File No. 0000232375 (All African People’s Development and Empowerment Project, Inc.’s diversity claim is based on a pledge to divest its current LPFM station, WUBP-LP). The Notes section also identifies applications which each seek a major modification of an existing LPFM station and pledge to surrender the current LPFM license upon commencement of the operations of the new station. See MX Group 2, Application File No. 0000233147; MX Group 78, Application File No. 0000233100; and MX Group 82, Application File No. 0000232573.

Bureau the administrative task of applying our voluntary and involuntary time-sharing rules.⁴³ For MX Groups where we have identified a tie and designated the group in Attachment A as “TIME SHARE,” the tied applicants have a 90-day opportunity to propose voluntary time-sharing arrangements to the Bureau.⁴⁴ If the applicants do not enter into a voluntary time-sharing agreement, we direct the Bureau to assign involuntary time-sharing arrangements to no more than three of the applicants tied for the highest point total in each MX Group.⁴⁵ The voluntary and involuntary time-sharing procedures are discussed in more detail below.

Voluntary Time-Sharing/Point Aggregation. No more than three of the tied applicants in each MX Group may propose to share use of the frequency by electronically filing, within 90-days of the release of this Public Notice, a time-share proposal.⁴⁶ The proposal must be electronically submitted in the form of an amendment to one (or more) of the applicants’ pending LPFM Applications in the Bureau’s Licensing and Management System (LMS) and will be treated as minor amendments to the time-share proponents’ applications and become part of the terms of the station authorization.⁴⁷ ***Only those applicants tied for the highest point total in an MX Group may enter into a time-sharing agreement and aggregate their points.***⁴⁸ No point-aggregation requests will be considered from non-high point total applicants.⁴⁹ Where time-share proposals include all of the tied applications, all of the tied applicants will be treated as tentative selectees; otherwise, time-share proponents’ points will be aggregated. The Bureau will aggregate the point totals of applicants that submit acceptable time-share proposals for the purpose of breaking a tie within a mutually exclusive group.⁵⁰

Time-share proposals must be in writing, signed by an authorized representative of each time-share proponent,⁵¹ and satisfy the following requirements: (1) the proposal must specify the proposed hours of operation of each time-share proponent; (2) the proposal must not include simultaneous

⁴³ See 47 CFR § 73.872(c), (d).

⁴⁴ See 47 CFR § 73.872(c).

⁴⁵ See 47 CFR § 73.872(d).

⁴⁶ 47 CFR § 73.872(c). The 30-day petition to deny period runs simultaneously with the 90-day period for filing voluntary time-share proposals.

⁴⁷ *Id.*

⁴⁸ See *id.* (explaining the procedures for applicants *tied* with the highest point total to propose voluntary time-sharing arrangements and aggregate their points); see also 47 CFR § 73.872(a) (“the tentative selectee will be the applicant within each group with the highest point total...”). Applicants aggregating points must specify the same frequency. See, e.g., *NCE LPFM Order*, 34 FCC Rcd at 855, n. 52 (2019).

⁴⁹ To enable and facilitate the potential grant of additional LPFM construction permits, such applicants, however, may continue to file amendments, settlement agreements, and voluntary, non-point aggregation, time-sharing agreements at any time. See, e.g., 47 CFR § 73.872(e) (permitting MX applicants to settle at any time).

⁵⁰ 47 CFR § 73.872(c) (explaining that applicants “may agree at any time before the Media Bureau implements the involuntary time-share procedures . . . to aggregate their points to enter into a time-share agreement”); see also, e.g., *New Hope Family Worship Center*, Letter Order, 30 FCC Rcd 7343 (MB 2015) (Bureau approving time-share proposal, aggregating points of applicants, and granting applications); *LPFM MX Group 198*, Order on Reconsideration, 30 FCC Rcd 14317 (MB 2015) (same). In the event a tentatively accepted time-share agreement is dismissed, the Bureau will release another public notice, initiating a second 90-day period for all remaining tentative selectees within the affected MX group to enter into either a voluntary time-share arrangement or universal settlement. See 47 CFR § 73.872(c)(5).

⁵¹ Because a time-share proposal is an amendment to an LPFM application, it must comply with the signature requirements of section 73.3513. See 47 CFR § 73.3513 (persons authorized to sign applications).

operation of the time-share proponents; and (3) each time-share proponent must propose to operate for at least 10 hours per week.⁵²

Involuntary Time-Sharing. If the applicants tied with the highest point total do not enter into a voluntary time-share agreement, or if a tie still remains following the submission of voluntary time-sharing arrangements, the applicants with tied, grantable applications will be eligible for equal, non-renewable license terms.⁵³

1. *MX Groups with Three or Fewer Tied and Grantable Applications.* If, after the petition to deny period,⁵⁴ major amendment period, and voluntary time-share period have run, there are three or fewer tied and grantable applications in an MX group, the Bureau will simultaneously grant the applications, assigning to each applicant an equal number of hours per week to operate the proposed station.⁵⁵ The Bureau will first offer the applicants an opportunity to voluntarily reach an arrangement on how to allocate the hours.⁵⁶ If they are unable to do so, the Bureau will ask the applicants to simultaneously and confidentially submit their preferred time slots to the Bureau.⁵⁷ The staff will use the information provided by the applicants to assign time slots, giving preference to the applicant that has been local for the longest uninterrupted period of time.⁵⁸ Specifically, the Bureau will determine the hours assigned to each applicant by first assigning hours to the applicant that has been local for the longest uninterrupted period of time,⁵⁹ then assigning hours to the applicant that has been local for the next longest uninterrupted period of time.

2. *MX Groups with More than Three Tied and Grantable Applications.* If, after the petition to deny period,⁶⁰ major amendment period, and voluntary time-share period have run, there are more than three tied and grantable applications within an MX Group, the Bureau will dismiss all but the applications of the three applicants that have been local for the longest uninterrupted periods of time.⁶¹ The Bureau

⁵² 47 CFR § 73.872(c)(1)(i) – (iii). The agreement can only be modified if all of the parties submit a written agreement, signed by each party, to the Commission, Attention: Audio Division, Media Bureau, prior to the date of change. 47 CFR § 73.872(c)(2).

⁵³ 47 CFR § 73.872(d).

⁵⁴ See 47 CFR § 73.780(d) (providing that petitions to deny may be filed within 30 days of the public notice announcing the acceptance for filing of all applications tentatively selected). Prior to grant, the Bureau staff will consider any petitions to deny, comments, and/or objections to determine whether grant of each application would be consistent with the public interest. See *id.*

⁵⁵ 47 CFR § 73.872(d)(2).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. *Id.* If there are three, tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. *Id.* The Bureau will award time in units as small as four hours per day. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for the applicant. *Id.*

⁵⁹ *Id.* Each LPFM applicant was required to provide the date it qualified as local on the Schedule 318. See Schedule 318, Involuntary Time-Share Information Section, Established Community Presence question. The Bureau reviews the dates to determine which applicant has been local for the longest period of time and assign hours to the applicants.

⁶⁰ See 47 CFR § 73.780(d).

⁶¹ See 47 CFR § 73.873(d)(3).

will then process the remaining applications in accordance with section 73.872(d)(2) of the Rules, the procedures for mutually exclusive groups with three or fewer tied, grantable applications.⁶²

Major Technical Amendments. Starting October 17, 2024, at 12:01 a.m. EDT, the first business day after the date of release of this Public Notice, we open a 60-day period to permit the MX applicants listed in Attachment A to file major technical amendments, such as non-adjacent channel changes and otherwise prohibited site relocations of greater than 11.2 kilometers. This 60-day period for filing major change technical amendments ends December 15, 2024 at 6:00 p.m. EDT. All applicants listed in Attachment A to this Public Notice, whether or not a tentative selectee, are permitted to file major change technical amendments during this period.⁶³ During this filing period, to facilitate the potential grant of additional applications and ultimate licensing of new LPFM stations, the Commission will waive section 73.871 of the Rules⁶⁴ to permit these applicants to file such major change technical amendments.⁶⁵ Major change technical amendments will be processed in accordance with established first-come, first-served licensing procedures.⁶⁶

Major amendments must protect all authorized FM stations,⁶⁷ pending applications for new and existing FM stations filed prior to the filing of the major amendment, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Rules.⁶⁸ Major amendments must also meet the minimum distance separation requirements and protect all authorized FM translator stations,⁶⁹ cutoff FM translator applications,⁷⁰ and FM translator applications filed prior to the filing of the major amendment.⁷¹ Finally, major amendments for Channels

⁶² See *id.*; see also *Sixth Report and Order*, 27 FCC Rcd at 15475, para. 197.

⁶³ We do not waive Section 73.871 as it pertains to major legal amendments, such as an amendment to reflect a sudden change of over 50 percent of an applicant's ownership.

⁶⁴ 47 CFR § 73.871. This limited waiver will allow applicants to use all available FM channels to resolve technical conflicts, eliminate ties, and obtain construction permits.

⁶⁵ The Commission has waived section 73.871 with respect to major technical amendments when considering mutually exclusive applications on prior occasions. See, e.g., *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665, 8671 (2014). See also *Settlement Period Announced for Closed Groups of Pending Low Power FM Mutually Exclusive Applications Filed in Windows I, II, and III*, Public Notice, 18 FCC Rcd 18048 (MB, 2003) (limited waiver of section 73.871 to allow applicants to resolve technical conflicts and obtain construction permits).

⁶⁶ The Bureau will process and review the major change technical amendments in the order that they are filed on a daily basis. If the first-filed amendment is acceptable, the Bureau will return all subsequently-filed conflicting amendments, giving the second-filed applicant the opportunity to pursue other options, including settlements, other major technical amendments, and minor amendments, to remove application conflicts. See, e.g., *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, Public Notice, 29 FCC Rcd 10847, 10853, n. 38 (2014) (explaining the processing procedures for limited major amendment window). All amendments filed on October 17, 2024 must be protected by any amendment filed after October 17, 2024. *Id.* Amendments filed on weekends or holidays are considered to be filed the next business day. See 47 CFR § 1.4.

⁶⁷ LPFM Applications must protect both authorized licenses and granted construction permits for FM, LPFM, and FM translator stations. See 47 CFR § 73.807(a)(1).

⁶⁸ 47 CFR § 73.807(a)(1).

⁶⁹ Authorized FM translator stations means both FM translator station licenses and granted FM translator construction permits. See, e.g., *Procedures Public Notice*, 38 FCC Rcd at 6662, n. 11; 47 CFR § 73.870(a)(1).

⁷⁰ A cutoff application is protected from subsequently filed and conflicting proposals. See 47 CFR § 74.1233(b)(1), (d)(1).

201 to 220 must protect and satisfy the minimum separation distances with respect to (1) all full power TV Channel 6 stations, and (2) low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.⁷² Consistent with established processing rules, a major amendment that fails to protect these authorizations and applications will be *dismissed with no opportunity to correct the deficiency*.⁷³

Applicants filing technical amendments should carefully consider all legal, *e.g.*, maintaining eligibility as a “local” applicant,⁷⁴ and technical requirements. Amendments may not create any new application conflicts and must specify rule-compliant facilities.⁷⁵ Major amendments will only be allowed during this 60-day period. Any major amendment that is filed after the close of this limited filing window, will *not* be considered. Applicants may continue to file minor amendments⁷⁶ and non-point aggregation settlement agreements⁷⁷ at any time.

Major amendments must be filed electronically on Schedule 318 through LMS. Paper filed amendments will not be considered. For assistance logging into LMS or accessing the Schedule 318, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 am-6:00 pm EST, or submit a request online at <https://fccprod.servicenow.services.com/auls?id=esupport>.

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⁷¹ 47 CFR § 73.807(c).

⁷² See 47 CFR § 73.825. The spacing requirements apply unless the application is accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 broadcast station concurring with the proposed LPFM facilities. See 47 CFR § 73.825(a).

⁷³ See 47 CFR § 73.870(c); *Procedures Public Notice*, 38 FCC Rcd at 6662, n.14; *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

⁷⁴ See 47 CFR 73.853(b).

⁷⁵ Major amendments may, however, request waivers of the second-adjacent channel spacing requirements. See 47 CFR § 73.807(e)(1). An LPFM applicant seeking such a waiver must include its waiver request with its application and an engineering study demonstrating that its proposed amendment will not cause interference to any authorized radio service. We direct the Bureau to dismiss any major amendment that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, and which does not contain an engineering exhibit in support of the waiver, and the applicant will not be permitted to seek *nunc pro tunc* reinstatement of its application. See, *e.g.*, *Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (affirming dismissal of application, without ability to amend and seek reinstatement, where applicant failed to comply with second-adjacent spacing rules and failed to include a waiver request with its application) (citing 47 CFR § 73.870(c)).

⁷⁶ Minor amendments include: (1) site relocations of 11.2 kilometers or less; (2) site relocations that involve overlap between the 60 dBu service contours of the currently authorized and proposed facilities; (3) changes in ownership where the original parties retain more than 50 percent ownership in the application as originally filed, or changes in ownership where the original parties retain 50 percent or less ownership as a result of governing board changes in a nonstock or membership applicant that occur over a period of six months or more, or occur over a period of less than six months and there is no evidence of a takeover concern or significant effect on the organization’s mission; and (4) changes in general and/or legal information. See 47 CFR § 73.871(c). Channel changes of no more than +/- three channels or to an intermediate frequency (+/- 53 or 54) channel are also considered minor. See 47 CFR § 73.870(a)(1).

⁷⁷ The settlement agreement must comply with the pertinent requirements of section 73.3525 of the Rules. 47 CFR § 73.3525; see also *Settlement Notice* at 3-4 (describing settlement agreement requirements). Settlement agreements should be electronically filed through LMS as minor amendments to the subject applications.

Acceptability Studies and Filing of Petitions. The Commission has examined the applications of each tentative selectee for application defects.⁷⁸ With the exceptions noted below, each tentative selectee identified in this Public Notice appears to be technically and legally qualified to become the licensee of the new LPFM station it has proposed. Accordingly, the applications of the tentative selectees noted in bold in Attachment A **ARE ACCEPTED FOR FILING**.⁷⁹ This triggers a 30-day period from release of the Public Notice for the filing of petitions to deny.⁸⁰

Any argument that a tentatively selected application should not be granted must be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's comparative points. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's must make its argument in a petition to deny. Parties may *not* file petitions for reconsideration because the point and tentative selectee determinations do not constitute "final" actions, and petitions for reconsideration do not lie against such interlocutory decisions.⁸¹ Petitions to deny must be filed in accordance with the procedures set forth in section 73.3584 of the Rules.⁸²

Local Public Notice Requirements. The acceptance for filing of each tentatively selected LPFM Application triggers the applicant's local public notice obligations.⁸³ Specifically, each tentatively selected LPFM Application accepted for filing herein must give local notice by posting notice online, either (1) on the station website or a website affiliated with the station, the applicant, or its parent entity, or (2) on a publicly accessible, locally targeted website.⁸⁴ The notice must be posted for 30 consecutive days following this acceptance for filing of the LPFM Application.⁸⁵

Attachment B – Second-Adjacent Waiver Requests. Many of the tentatively selected applicants identified in this Public Notice included a request for a waiver of the second-adjacent channel spacing requirements set forth in section 73.807 of the Rules.⁸⁶ In the *Sixth Report and Order*, we directed the Bureau to specifically identify all potentially affected second-adjacent channel stations in the

⁷⁸ The staff has made no "acceptability" determination regarding the applications that received fewer than the highest point total in each mutually exclusive group.

⁷⁹ See 47 CFR § 73.870(d).

⁸⁰ *Id.* We note that objections have been previously filed against applications in several MX groups. See Application File Nos. 0000232717, 0000233102, 0000232556, 0000231434, 0000231667, 0000231808, 0000232099, 0000232837, 0000231820, 0000233112, 0000231679, 0000232670, 0000232380, and 0000233032. The Commission generally does not consider objections at this stage, but rather, reviews the merits of any objection if/when the subject application becomes accepted for filing. The Commission will review the merits of each objection after the applications are accepted for filing.

⁸¹ An interlocutory action is non-final, one that neither denies nor dismisses an application nor terminates an applicant's right to participate in the proceeding. See 47 CFR § 1.106 (a)(1). See also *American Family Assoc., Inc.*, Letter Order, 22 FCC Rcd 11165 (MB 2007); *Harry F. Cole, Esq.*, Letter Order, 27 FCC Rcd 9295 (MB 2012).

⁸² 47 CFR § 73.3584. An applicant may file an opposition, and the petitioner may file a reply, within the times prescribed by the rules. 47 CFR § 73.3584(b).

⁸³ See 47 CFR § 73.3580.

⁸⁴ See 47 CFR §§ 73.3580(a), (b)(2), (c)(1).

⁸⁵ See 47 CFR § 73.3580(b)(2)(iii). The applicant must post the online notice no earlier than the date of release of this acceptance for filing public notice, and not later than five business days following release of this acceptance for filing public notice. *Id.* at § 73.3580(b)(2)(iv).

⁸⁶ 47 CFR § 73.807(e)(1). A waiver applicant must demonstrate that its proposed operations will not result in interference to any authorized radio service. *Id.*

Public Notice that accepts for filing an LPFM application that includes a second-adjacent channel waiver request.⁸⁷ Accordingly, we identify these applications and respective stations in Attachment B.

Forthcoming Staff Action. We direct the Bureau staff, once the petition to deny period and the 60-day major amendment period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau's routine processing procedures. In the case of tied applications, the final study will not be conducted until the tie has been eliminated through amendment, settlement, and/or time-share procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected applications would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.⁸⁸

With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether each applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.⁸⁹ The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the MX Group, or where a new or novel question or substantial and material question of fact otherwise exists.⁹⁰ In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

Severance for Purposes of Petitions, Appeals and Finality. Each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals.⁹¹ The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our

⁸⁷ *Sixth Report and Order*, 27 FCC Rcd at 15429-15430, para. 79.

⁸⁸ 47 U.S.C. § 309(d).

⁸⁹ See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

⁹⁰ See generally *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Education FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6162 n.230 (2007) ("If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283."), *rescinded in part on other grounds by Indiana Community Radio Corp.*, 23 FCC Rcd 10963 (MB 2008).

⁹¹ See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004. In cases that involve separate mutually exclusive groups, but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).

decision for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group herein.⁹² If any decision in this Public Notice is declared invalid for any reason, the remaining portions shall be severable from the invalid part and shall remain in full force and effect to the fullest extent permitted by law.

Additional Information. For additional information, please contact: James Bradshaw, James.Bradshaw@fcc.gov; Alexander Sanjenis, Alexander.Sanjenis@fcc.gov; Lisa Scanlan, Lisa.Scanlan@fcc.gov; or Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov of the Media Bureau, Audio Division.

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⁹² See 47 CFR § 1.103(b).

Attachment A - Mutually Exclusive Applications

MX Group	File Number	Applicant	City	State	Estab. Comm'y Presence point	Local Prog Orig point	Main Studio point	Local Program Main St. point	Diversit y Own. Point	Tribes point	TOTAL points	NOTES
1	231763	North Alabama Community Broadcasting	Battleground	AL	0	1	1	1	1	0	4	
1	231871	Tripp, LLC	Cullman	AL	1(0)	1	1	1	1(0)	0	3	No exhibit; unqualified for diversity point
2	231483	Oliver Lewis Inner City Thoroughbred Jockey Club	Little Rock	AR	1	1	0	0	1	0	3	
2	233147	Multicultural Expo Center	Little Rock	AR	1	1	1	1	1	0	5	TIME SHARE; major change - surrender KINC-LP
2	233118	The Lam Foundation	North Little Rock	AR	1	1	1	1	1	0	5	TIME SHARE
4	232469	Iglesia Ciudad De Refugio Y Restauracion Inc.	Springdale	AR	1	1	1	1	0	0	4	Major change
4	232992	Christ Followers Marshallese Full Gospel Church, Inc.	Springdale	AR	1	1	1	1	1	0	5	
5	231424	Texarkana Community Radio -- Fifteenth Street Co	Texarkana	AR	0	1	1	1	1	0	4	
5	231552	Radio Inc.	Wake Village	TX	1	1	1	1	1	0	5	
6	232015	Kiddos Educational Foundation	Mesa	AZ	0	1	1	1	1	0	4	
6	231642	Salt River Pima-Maricopa Indian Community	Salt River Pima-A	AZ	1	1	1	1	1	1	6	
7	231633	Mount Lemmon Radio Club	Mount Lemmon	AZ	1	0	1	0	1	0	3	
7	232627	Ministerios El Rey De Gloria	Whitetail	AZ	1	1	1	1	1	0	5	
8	232604	School Of HipHop Phx	Phoenix	AZ	1	1	1	1	1	0	5	TIME SHARE
8	233000	Nothing is Greater Than Love Foundation	Phoenix	AZ	1	1	1	1	1	0	5	TIME SHARE
9	231798	Delta 2000	Antioch	CA	1(0)	1	1	1	1	0	4	TIME SHARE; untimely exhibit
9	232361	Antioch Community Radio	Antioch	CA	0	1	1	1	1	0	4	TIME SHARE
10	232916	Radio Restauracion	Bakersfield	CA	0	1	1	1	1	1(0)	4	TIME SHARE; unqualified for tribal point
10	233090	Kern Sounds	Bakersfield	CA	0	1	1	1	1	0	4	TIME SHARE
11	232093	Humboldt County Hispanics For Education Fund	Chowchilla	CA	1	1	1	1	1	0	5	
11	232174	Bible Christian Church	Le Grand	CA	1	0	0	0	1	0	2	
12	233172	Hene Aqu Ca Church	Cucamonga	CA	0	1	1	1	1	0	4	
12	231696	Iglesia Ministerios Voz De Jubilo	Glendora	CA	1	1	1	1	1	0	5	
12	232301	Mena Coalition, Inc.	San Dimas	CA	0	1	1	1	1	0	4	
14	232278	The Marina Foundation	Marina	CA	1	1	1	1	1	0	5	
14	232943	Beat Poet Broadcasters Inc.	Monterey	CA	1(0)	1	1	1	1	0	4	Less than 2 years established
15	233076	San Jose Hispanic Foursquare Church	Morgan Hill	CA	0	1	1	1	1	0	4	
15	233042	I-Health Radio	Watsonville	CA	1	1	1	1	1	0	5	
16	231960	Mountain Community Radio	Oakhurst	CA	0	1	1	1	1	0	4	TIME SHARE
16	232969	Grateful Teachers Media And Music Education For	Oakhurst	CA	0	1	1	1	1	0	4	TIME SHARE
17	232602	Ojai Community Broadcasting Foundation	Ojai	CA	0	1	1	1	1	0	4	TIME SHARE

Attachment A - Mutually Exclusive Applications

MX Group	File Number	Applicant	City	State	Estab. Comm'y Presence	Local Prog point	Main Studio point	Local Program Main St. point	Diversit y Own. Point	Tribes point	TOTAL points	NOTES
17	232614	Camarillo Community Radio	Ventura	CA	1(0)	1	1	1	1	0	4	TIME SHARE; less than 2 years established
19	232939	Football Camp For Kids	San Diego	CA	1	1	1	1	1	0	5	TIME SHARE
19	232587	Labors Training And Community Development All	San Diego	CA	1	1	1	1	1	0	5	TIME SHARE
19	232802	Justice Overcoming Boundaries In San Diego Coun	San Diego	CA	1	1	1	1	1	0	5	TIME SHARE
20	233068	African Chamber Of Commerce Colorado, Usa	Aurora	CO	1	1	1	1	1	0	5	
20	231690	Denver Community Radio	Denver	CO	0	1	1	1	1	0	4	
21	231813	Hippie Hop Radio	Northglenn	CO	1	1	1	1	1	0	5	TIME SHARE
21	232275	CPC of the WMM-Thornton, Co-One Inc.	Northglenn	CO	1	1	1	1	1	0	5	TIME SHARE
21	231447	Thornton Community Radio	Thornton	CO	0	1	1	1	1	0	4	
22	231812	La Voz De La Verdad Inc.	Naugatuck	CT	1	1	1	1	1	0	5	
22	232186	Latino Outreach Of Connecticut, Inc.	Waterbury	CT	0	1	1	1	1	0	4	
23	232742	Sickle Cell Foundation Of CFL Inc.	Bassville Park	FL	0	1	1	1	1	0	4	
23	231772	Ember 911, Inc.	Leesburg	FL	1	1	1	1	1	0	5	
24	232141	Cape Baptist Church, Inc.	Cape Coral	FL	1	1	1	1	1	0	5	TIME SHARE
24	231958	True Tabernacle Of Jesus Christ Int. Ministries, Inc	Fort Myers	FL	1	1	1	1	1	0	5	TIME SHARE
25	231780	Lion Of Judah Prophetic Worship Center, Inc.	Citrus Springs	FL	1	1	1	1	1	0	5	
25	231731	Rainbow Springs Community Radio	Dunnellon	FL	1(0)	1	1	1	1	1(0)	4	No exhibit; unqualified for tribal point
26	232893	Insight Flow Inc.	Debary	FL	0	1	1	1	1	0	4	TIME SHARE
26	232039	Volusia Vibes Radio, Inc.	Deltona	FL	0	1	1	1	1	1(0)	4	TIME SHARE; unqualified for tribal point
27	232047	Homegrown Deland, Inc.	Deland	FL	0	1	1	1	1	0	4	TIME SHARE
27	233012	Learn Bound Corporation	Deland	FL	0	1	1	1	1	0	4	TIME SHARE
28	231491	Yip Las Olas Inc.	Fort Lauderdale	FL	1	1	1	1	1	0	5	TIME SHARE
28	233011	The Reme Foundation, Inc.	Fort Lauderdale	FL	1	1	1	1	1	0	5	TIME SHARE
29	231450	For A Better Community Corp.	Homestead	FL	0	1	1	1	1	0	4	
29	233164	King Jesus Haitian Inc.	Homestead	FL	1	1	1	1	1	0	5	TIME SHARE
29	231444	La Familia De Fe Corp.	Miami	FL	1	1	1	1	1	0	5	TIME SHARE
29	231715	Cristo Te Ama Ministry	Miami	FL	0	1	1	1	1	0	4	
29	233072	Doral Voice Corp.	Miami	FL	1	1	1	1	1	0	5	TIME SHARE
30	232317	Coastal Media Advocates, Inc.	Melbourne	FL	0	1	1	1	1	0	4	TIME SHARE
30	232072	We Are Brevard Inc.	Melbourne	FL	0	1	1	1	1	0	4	TIME SHARE
31	232026	Encouragement Ministries Corp.	Ocala	FL	0	0	1	0	1	0	2	
31	232462	Ministerio Casa De Oracion Para Las Naciones	Ocala	FL	0	1	1	1	1	0	4	TIME SHARE

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31	232425	Rolling Hills Broadcast Inc.	Ocala	FL	0	1	1	1	1	0	4	TIME SHARE
31	232192	Ocala Broadcasting Foundation Inc.	Ocala	FL	0	1	1	1	1	0	4	TIME SHARE
31	232594	Education Through Media Foundation	Ocala	FL	0	1	1	1	1	0	4	TIME SHARE
32	231729	Ocala Community Communications Network Inc.	Ocala	FL	0	1	1	1	1	0	4	
32	232963	Ocala Pride Incorporated	Ocala	FL	1	1	1	1	1	0	5	
33	232749	Latino Broadcasting Foundation Corporation	Orlando	FL	1(0)	1	1	1	1	0	4	Less than 2 years established
33	233132	Christ For All Nations Church, Inc.	Orlando	FL	1	1	1	1	1	0	5	
34	232571	La Voz Education	Port Saint Lucie	FL	1(0)	1	1	1	1	0	4	Less than 2 years established
34	232868	Omega Baptist Church Of Pentecost Inc.	Port Saint Lucie	FL	1	1	1	1	1	0	5	
35	231766	Brunswick Community Radio	Brunswick	GA	0	1	1	1	1	0	4	
35	232674	Coastal Georgia Area Community Action Authority	Brunswick	GA	1	1	1	1	1	0	5	
37	231785	The Last Hour Ministry, Inc.	Norcross	GA	0	1	1	1	1	0	4	TIME SHARE
37	231710	Christian Public Radio, Inc.	Roswell	GA	1(0)	1	1	1	1	0	4	TIME SHARE; less than 2 years established
39	233088	Climate March	Des Moines	IA	1	1	1	1	1	1(0)	5	TIME SHARE; unqualified for tribal point
39	232764	CPC of the WMM Usa-Des Moines IA-One Inc.	Des Moines	IA	1	1	1	1	1	0	5	TIME SHARE
40	232979	Trinity International University, Deerfield, IL Camp	Deerfield	IL	1	1	1	1	1	0	5	
40	231743	Antioquia Pentecostal Church Inc.	Lincolnshire	IL	0	1	1	1	1	0	4	
41	231456	Rockford Community Radio	Rockford	IL	0	1	1	1	1	0	4	TIME SHARE
41	232421	Northern Illinois Radio Broadcasting Association	Rockford	IL	0	1	1	1	1	0	4	TIME SHARE
42	232988	In Frequency, Inc.	Clarksville	IN	0	1	1	1	1	0	4	
42	231681	Fuego Corporation	Louisville	KY	1	1	1	1	1	0	5	
45	231441	Monroe Community Radio	Monroe	LA	0	1	1	1	1	0	4	
45	231470	Centro Compasion	Monroe	LA	1	1	1	1	1	0	5	
45	233014	Old Time Radio Studies And Creativity Project	Monroe	LA	0	1	1	1	1	0	4	
46	232666	Light City Church	New Orleans	LA	1	1	1	1	1	0	5	
46	233183	IMade In New Orleans	New Orleans	LA	0	1	1	1	1	0	4	
46	233187	New Orleans Master Craft Guild	New Orleans	LA	1(0)	1	1	1	1	0	4	Defective exhibit
47	231434	Easthampton Community Radio	Easthampton	MA	0	1	1	1	1	0	4	
47	232837	Holyoke Community College	Holyoke	MA	1(0)	1	1	1	0	0	3	Defective exhibit
47	232638	Above The Rim Inc.	Springfield	MA	1	1	1	1	1	0	5	TIME SHARE
47	232099	Iglesia Cristiana Jehova Vive	Springfield	MA	1(0)	1	1	1	1	0	4	Less than 2 years established
47	231667	Slavic Baptist Church	West Springfield	MA	1(0)	1	1	1	1	0	4	Defective exhibit
47	231808	Westfield Evangelical Free Church Church	Westfield	MA	1(0)	1	1	1	1	0	4	Defective exhibit

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47	231982	City Of Westfield	Westfield	MA	1	1	1	1	1	0	5	TIME SHARE
49	232640	Foxboro Cable Access	Foxboro	MA	1(0)	1	1	1	1	0	4	Untimely exhibit
49	232187	Casa De Adoracion Inc.	Taunton	MA	1	1	1	1	1	0	5	
49	231820	Broadcast Learning Group	Woonsocket	RI	1(0)	1	1	1	1	1(0)	4	Less than 2 years established; unqualified for tribal point
50	231679	Expresso Latin Radio Inc.	Worcester	MA	0	1	1	1	1	0	4	TIME SHARE
50	231446	Worcester Community Radio	Worcester	MA	0	1	1	1	1	0	4	TIME SHARE
50	232193	Chinese Foundation Of Worcester Corp.	Worcester	MA	1(0)	1	1	1	1	0	4	TIME SHARE; less than 2 years established
51	233138	We Heart Berlin, Inc.	Berlin	MD	1	1	1	1	1	0	5	
51	231587	Faith Baptist Church	Berlin	MD	1(0)	1	1	1	1	0	4	Defective exhibit
52	232034	Ministerio Ondas De Amor	Holland	MI	1(0)	1	1	1	1	0	4	Defective exhibit
52	232977	West Michigan Substitute Teacher Advisory	Holland	MI	0	1	0	0	1	0	2	
53	233052	Generacion Vino Nuevo	Lansing	MI	1(0)	1	1	1	1	0	4	Less than 2 years local
53	232657	Lansing Area Peace Education Center	Lansing	MI	1	1	1	1	1	0	5	
54	232879	Shoreline Community Development Corporation	Muskegon	MI	1	1	1	1	1	0	5	TIME SHARE
54	232882	Muskegon Heights Boxing Club Of Champions, Inc	Muskegon	MI	1	1	1	1	1	0	5	TIME SHARE
55	232501	Hope In The Heartland	Centerville	MO	0	0	0	0	1	0	1	
55	231438	University Of Central Missouri	Warrensburg	MO	1	1	1	1	1	0	5	
56	231987	Missouri Mid-South Conference Of The United Ch	Maplewood	MO	1	1	1	1	1	0	5	TIME SHARE
56	232375	All African People's Development And Empowerm	St. Louis	MO	1	1	1	1	1	0	5	TIME SHARE; divest pledge - WUBP-LP
56	232772	African People's Education And Defense Fund, Inc	St. Louis	MO	1	1	1	1	1	0	5	TIME SHARE
57	232163	Mississippi College	Clinton	MS	1	1	1	1	1	0	5	TIME SHARE
57	231478	Renew Florence	Florence	MS	1(0)	1	0	0	1	0	2	Less than 2 years established
57	233159	People's Advocacy Institute	Jackson	MS	1	1	1	1	1	0	5	TIME SHARE
57	232323	Crazy Faith Foundation Ltd	Jackson	MS	0	1	1	1	1	0	4	
58	232910	Clarksville Theological Seminary	Clayton	NC	1	1	1	1	1	0	5	TIME SHARE
58	232696	Calvary Chapel Of Clayton	Clayton	NC	1	1	1	1	1	0	5	TIME SHARE
59	232226	Ambassador Christian School, Inc.	Huntersville	NC	0	0	0	0	1	0	1	
59	232180	American Broadcasting Company	Mooreville	NC	0	1	1	1	1	0	4	
60	232896	Yoelkie Media Foundation A NJ Nonprofit Corporat	A R P Ins	NJ	1(0)	1	1	1	1	0	4	Less than 2 years established
60	232973	Chinese Church Of Atlantic City	Atlantic City	NJ	1(0)	1	1	1	1	1(0)	4	Less than 2 years established; unqualified for tribal point
60	232380	Transmission Communications Network A Nonpro	Atlantic City	NJ	1	1	1	1	1	0	5	
61	232214	Pentecostal Church Of Penns Grove	Penns Grove	NJ	1(0)	1	1	1	1	1(0)	4	TIME SHARE; less than 2 years established; unqualified tribal point

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61	231724	Corelink Ministries	Glen Mills	PA	1(0)	1	1	1	1	0	4	TIME SHARE; defective exhibit
61	231631	Padio Phila Inc.	Newtown Square	PA	0	1	1	1	1	0	4	TIME SHARE
62	233032	Faith Christian Church	Boulder City	NV	1(0)	1	1	1	1	0	4	TIME SHARE; defective exhibit
62	232171	Mli TV	Henderson	NV	1(0)	1	1	1	1	0	4	TIME SHARE; defective exhibit
63	232218	Las Vegas Community Radio	Las Vegas	NV	1	1	1	1	1	0	5	
63	232670	Alpha Omar Zainab Media Corp.	Las Vegas	NV	0	1	1	1	1	0	4	
63	233065	Broadcast Educational Community Radio Station	Las Vegas	NV	0	1	1	1	1	1(0)	4	Unqualified tribal point
65	231985	Institutional Community Development Corporation	Cleveland	OH	1	1	1	1	1	0	5	TIME SHARE
65	231706	Cleveland Community Radio	Cleveland	OH	0	1	1	1	1	0	4	
65	232558	Latinos International Festival, Inc.	Cleveland	OH	1	1	1	1	1	0	5	TIME SHARE
66	232004	Iglesia Pentecostal Cristo Misionera	Lorain	OH	1(0)	1	1	1	1	0	4	No exhibit
66	232104	Radio Revelacion FM, Inc.	Sheffield Lake	OH	1	1	1	1	1	0	5	
67	232556	The Marion Education Exchange	Marion	OH	1	1	1	1	1	0	5	TIME SHARE
67	232766	My Community Church	Marion	OH	1	1	1	1	1	0	5	TIME SHARE
68	231971	Liberty West Broadcasting Inc.	Mason	OH	1	1	1	1	1	0	5	
68	233106	Iglesia Cristiana Pentecostal Aposento Alto	Middletown	OH	1(0)	1	1	1	1	0	4	Untimely exhibit
69	231700	Tulsa Community Radio	Tulsa	OK	0	1	1	1	1	0	4	
69	232903	Tulsarise	Tulsa	OK	1	1	1	1	1	0	5	TIME SHARE
69	233152	Friends Of The Jazz Depot, Inc.	Tulsa	OK	1	1	1	1	1	0	5	TIME SHARE
70	232807	The Intersection Church	Abbotstown	PA	1	1	1	1	1	0	5	TIME SHARE
70	233037	Community Media Of South Central PA	New Oxford	PA	1	1	1	1	1	0	5	TIME SHARE
73	232184	Indiana Radio Syndicate	Indiana	PA	0	0	1	0	1	0	2	
73	232182	Worldwide Pants, Incorporated	Indiana	PA	0	1	1	1	1	0	4	
73	232183	Indiana Broadcasting Corporation	Indiana	PA	0	0	1	0	1	0	2	
74	231973	Leading Your Future Corp.	Aguada	PR	0	1	1	1	1	0	4	
74	232897	Spirit Entertainment Inc.	Aguada	PR	1	1	1	1	1	0	5	
74	232032	Bahomamey Radiotelephone Corp.	Rincon	PR	0	1	1	1	1	0	4	
75	232333	Ministerio Dios Cumple El Proposito En Mi Inc.	Bayamon	PR	1(0)	1	1	1	1	0	4	Less than 2 years established
75	232605	New Beginning Communications Corp.	Bayamon	PR	0	1	1	1	1	0	4	
75	231892	Iglesia Generacion De Fuego, Inc.	Caguas	PR	1	1	1	1	1	0	5	TIME SHARE
75	232383	Iglesia Cristiana Pentecostal La Gran Cosecha, Inc.	Caguas	PR	1	1	1	1	1	0	5	TIME SHARE
75	233063	Cantares FM Media Group Inc.	Canovanas	PR	1	1	1	1	1	0	5	TIME SHARE
75	232609	Gigante Communications Corp.	Carolina	PR	0	1	1	1	1	0	4	
75	232369	Fundacion Hazlos Sonreir Complices De Amor Inc.	Cayey	PR	1	1	1	1	1	0	5	TIME SHARE

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76	232800	Sunset Radio Group Inc.	Boqueron	PR	0	1	1	1	1	0	4	
76	232755	Guiding Light Media, Inc.	Boqueron	PR	0	1	1	1	1	0	4	
76	232124	Northwest Broadcasting Corporation	Mayaguez	PR	1	1	1	1	1	0	5	
77	231742	Armonia Communications, Inc.	Cabo Rojo	PR	1	1	1	1	1	0	5	TIME SHARE
77	232279	Cristo Se interesa Por Ti, Inc.	Lajas	PR	1	1	1	1	1	0	5	TIME SHARE
78	231950	New Impact Educational Group Inc.	Guayanilla	PR	0	1	1	1	1	0	4	
78	233100	Onda Cultural Del Sur Inc.	Ponce	PR	1	1	1	1	1	0	5	Major change - surrender WJED-LP
79	231769	Imparcial, Inc.	Ponce	PR	1	1	1	1	1	0	5	TIME SHARE
79	232576	Iglesia Pabellon De La Victoria Ponce Inc.	Ponce	PR	1	1	1	1	1	0	5	TIME SHARE
80	231748	Alimentame Rescatame Adoptame Corp.	Quebradillas	PR	1	1	1	1	1	0	5	
80	232881	Hispanic Broadcast System Puerto Rico Inc.	Quebradillas	PR	1(0)	1	1	1	1	0	4	Defective exhibit
82	231733	Blackstone Radio Foundation	Westerly	RI	1(0)	1	1	1	1	1(0)	4	TIME SHARE; less than 2 years established; unqualified tribal point
82	232573	The Buzz Alternative Radio Foundation Inc.	Westerly	RI	1	1	1	1	0	0	4	TIME SHARE; major change - surrender WSUB-LP
83	232216	Faith Baptist Church	Bath	SC	1	1	1	1	1	0	5	
83	231674	Christian Sounds Media	North Augusta	SC	0	1	1	1	1	0	4	
84	232700	Ubuntu Institute For Community Development	Greenville	SC	1	1	1	1	1	0	5	
84	231918	Powerhouse Broadcasting Inc.	Piedmont	SC	0	1	1	1	1	0	4	
85	233075	Faith Cathedral Fellowship Inc.	Walterboro	SC	1	1	1	1	1	0	5	TIME SHARE
85	231750	Saints Center Ministries	Walterboro	SC	1	1	1	1	1	0	5	TIME SHARE
86	232577	Universidad Internacional Cristiana De Ministerios	Bartlett	TN	0	1	1	1	1	0	4	
86	232370	Citizens Against Unfair Financial Practices	Memphis	TN	1	1	1	1	1	0	5	
88	232705	Ministerios La True Radio	Allen	TX	0	1	1	1	1	1(0)	4	TIME SHARE; unqualified for tribal point
88	233069	Pulse Media Broadcasting Group	Plano	TX	0	1	1	1	1	0	4	TIME SHARE
89	232613	Panhandle Pride, Inc.	Amarillo	TX	1	1	1	1	1	0	5	
89	232933	Ethene Radio Amarillo	Amarillo	TX	1(0)	1	1	1	1	0	4	Less than 2 years established
90	232293	CPC of the WMM - Fort Worth, TX - One Inc.	Fort Worth	TX	1	1	1	1	1	0	5	TIME SHARE
90	233004	LGBTQ Saves	Fort Worth	TX	1	1	1	1	1	0	5	TIME SHARE
91	233112	Triangle Repeater Association	Beaumont	TX	0	1	1	1	1	0	4	TIME SHARE
91	232040	Lumberton Ham Radio Club	Lumberton	TX	1(0)	1	1	1	1	0	4	TIME SHARE; less than 2 years established
92	232762	CPC of the WMM-Carrollton, TX-One, Inc.	Carrollton	TX	1	1	1	1	1	0	5	TIME SHARE

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92	231771	Cedars Community Development Corporation	Lancaster	TX	1	1	1	1	1	0	5	TIME SHARE
92	231989	Iglesia De Cristo Kadosh	Seagoville	TX	1	1	1	1	1	0	5	TIME SHARE
95	232585	New Vessels Ministries / Iglesia Odres Nuevos	Macdonia	TX	1	1	1	1	1	0	5	TIME SHARE
95	232012	Sky Broadcasting, Inc.	San Antonio	TX	0	1	1	1	1	0	4	
95	232561	Violet Broadcasting, Inc.	San Antonio	TX	1(0)	1	1	1	1	0	4	Less than 2 years established
95	232724	Bexar County Public Safety Associaton	San Antonio	TX	1	1	1	1	1	0	5	TIME SHARE
96	232347	Trucha	McAllen	TX	1	1	1	1	1	0	5	TIME SHARE
96	232077	Pharr Center Church	Pharr	TX	1	1	1	1	1	0	5	TIME SHARE
97	232726	Maranatha Christian Broadcast	Odessa	TX	0	1	1	1	1	0	4	
97	232616	Pride Center West Texas	Odessa	TX	1	1	1	1	1	0	5	
98	232586	Dunamis Community Corporation	Temple	TX	0	1	1	1	1	0	4	TIME SHARE
98	232578	Royer Foundation	Temple	TX	0	1	1	1	1	0	4	TIME SHARE
99	231602	Global Educations Ministries Inc.	Tomball	TX	0	1	1	1	1	0	4	TIME SHARE
99	232111	Rosehill Amateur Radio Club	Tomball	TX	1(0)	1	1	1	1	0	4	TIME SHARE; less than 2 years established
100	232349	Virginia College & Community Radio Alliance	Charlottesville	VA	1	1	1	1	1	0	5	
100	231787	La Hora Final Ministry, Inc.	Charlottesville	VA	0	1	1	1	1	0	4	
100	233061	Air Mix Virginia, Inc.	Charlottesville	VA	1	1	1	1	0	0	4	major change
101	231455	Petersburg Community Radio	Petersburg	VA	0	1	1	1	1	0	4	TIME SHARE
101	232202	Leslie International Public Press Center	Petersburg	VA	0	1	1	1	1	0	4	TIME SHARE
103	232199	God's New Generation - Nueva Generacion De Dios	Pasco	WA	1	1	1	1	1	0	5	TIME SHARE
103	232753	Casa De Avivamiento	Pasco	WA	1	1	1	1	1	0	5	TIME SHARE
104	233127	Spokane Word	Spokane	WA	1	1	1	1	1	0	5	TIME SHARE
104	232991	Latinos En Spokane	Spokane	WA	1	1	1	1	1	0	5	TIME SHARE
104	232900	School Of Music Spokane	Spokane	WA	0	1	1	1	1	0	4	
104	233062	Living Stone Church Of Spokane	Spokane	WA	1	1	1	1	1	0	5	TIME SHARE
105	232078	Manitowoc Baptist Church	Manitowoc	WI	1	1	1	1	1	0	5	TIME SHARE
105	232895	Church Of Christ, Manitowoc	Manitowoc	WI	1	1	1	1	1	0	5	TIME SHARE
106	232083	Iglesia Pentecostal Jehova Rafa	McFarland	WI	1	1	1	1	1	0	5	TIME SHARE
106	233168	Madison Christian LPFM Radio, Inc.	Monona	WI	1	1	1	1	1	0	5	TIME SHARE
107	231506	Souls Harbor Baptist Church, Inc.	Milwaukee	WI	1	1	1	1	1	0	5	TIME SHARE
107	232321	CPC of the WMM - Milwaukee WI - One Inc.	Milwaukee	WI	1	1	1	1	1	0	5	TIME SHARE
108	232046	Native American Music Center Ltd.	Rhineland	WI	0	1	0	0	1	0	2	

[illegible]

MX Group	File Number	City	State	Applicant	2nd adj stations
1	231763	Battleground	AL	North Alabama Community Broadcasting	WXJC-FM
2	233147	Little Rock	AR	Multicultural Expo Center	KKSP(FM), KKPT(FM)
2	233118	North Little Rock	AR	The Lam Foundation	KKSP(FM), KKPT(FM)
4	232992	Springdale	AR	Christ Followers Marshallese Full Gospel Church, Inc.	KIGL(FM)
5	231552	Wake Village	TX	Radio Inc.	KKYR-FM
6	231642	Salt River Pima-Maricopa I	AZ	Salt River Pima-Maricopa Indian Community	KDKB(FM)
8	232604	Phoenix	AZ	School Of Hiphop Phx	KTAR-FM, KJZZ(FM)
8	233000	Phoenix	AZ	Nothing Is Greater Than Love Foundation	KTAR-FM, KJZZ(FM)
12	231696	Glendora	CA	Iglesia Ministerios Voz De Jubilo	KRTH(FM), KSCA(FM)
14	232278	Marina	CA	The Marina Foundation	KEZR(FM)
15	233042	Watsonville	CA	I-Health Radio	KTOM-FM
17	232614	Ventura	CA	Camarillo Community Radio	KSBL(FM)
19	232939	San Diego	CA	Football Camp For Kids	KYXK(FM), KWFN(FM)
19	232587	San Diego	CA	Labors Training And Community Development Alliance	KYXK(FM), KWFN(FM)
19	232802	San Diego	CA	Justice Overcoming Boundaries In San Diego County	KYXK(FM), KWFN(FM)
20	233068	Aurora	CO	African Chamber Of Commerce Colorado, Usa	KXKL-FM, KALC(FM)
22	231812	Naugatuck	CT	La Voz De La Verdad Inc.	WEBE(FM)
24	232141	Cape Coral	FL	Cape Baptist Church, Inc.	WAVV(FM)
24	231958	Fort Myers	FL	True Tabernacle Of Jesus Christ Int. Ministries, Inc.	WAVV(FM)
26	232893	Debary	FL	Insight Flow Inc.	WQMP(FM), W274AY
26	232039	Deltona	FL	Volusia Vibes Radio, Inc.	WQMP(FM), W274AY
28	231491	Fort Lauderdale	FL	Yjp Las Olas Inc.	WMIA-FM, WFEZ(FM)
28	233011	Fort Lauderdale	FL	The Reme Foundation, Inc.	WMIA-FM, WFEZ(FM)
29	233164	Homestead	FL	King Jesus Haitian Inc.	WEDR(FM), WKIS(FM)
29	231444	Miami	FL	La Familia De Fe Corp.	WEDR(FM), WKIS(FM)
29	233072	Miami	FL	Doral Voice Corp.	WEDR(FM), WKIS(FM)
31	232462	Ocala	FL	Ministerio Casa De Oracion Para Las Naciones	WOGK(FM), WMFQ(FM)
31	232425	Ocala	FL	Rolling Hills Broadcast Inc.	WOGK(FM), WMFQ(FM)
31	232192	Ocala	FL	Ocala Broadcasting Foundation Inc.	WOGK(FM), WMFQ(FM)
31	232594	Ocala	FL	Education Through Media Foundation	WOGK(FM), WMFQ(FM)
32	232963	Ocala	FL	Ocala Pride Incorporated	WYND-FM

MX Group	File Number	City	State	Applicant	2nd adj stations
33	233132	Orlando	FL	Christ For All Nations Church, Inc.	WWKA(FM), WPRK(FM)
37	231785	Norcross	GA	The Last Hour Ministry, Inc.	WLKQ-FM, WKHX-FM
37	231710	Roswell	GA	Christian Public Radio, Inc.	WKHX-FM
39	233088	Des Moines	IA	Climate March	KKDM(FM)
39	232764	Des Moines	IA	CPC of the WMM Usa-Des Moines IA-One Inc.	KKDM(FM)
40	232979	Deerfield	IL	Trinity International University, Deerfield, Il Campus.	WCFS-FM, WPPN(FM)
42	231681	Louisville	KY	Fuego Corporation	WFPL(FM)
46	232666	New Orleans	LA	Light City Church	WRNO-FM, KLRZ(FM)
49	232187	Taunton	MA	Casa De Adoracion Inc.	WBQT(FM)
51	233138	Berlin	MD	We Heart Berlin, Inc.	WYPO(FM)
53	232657	Lansing	MI	Lansing Area Peace Education Center	WJIM-FM
54	232879	Muskegon	MI	Shoreline Community Development Corporation	WVIB(FM)
54	232882	Muskegon	MI	Muskegon Heights Boxing Club Of Champions, Inc.	WVIB(FM)
56	231987	Maplewood	MO	Missouri Mid-South Conference Of The United Church Of Christ	KSD(FM)
56	232375	St. Louis	MO	All African People's Development And Empowerment Project, Inc.	KSD(FM)
56	232772	St. Louis	MO	African People's Education And Defense Fund, Inc.	KSD(FM)
57	232163	Clinton	MS	Mississippi College	WSTZ-FM, WKXI-FM
57	233159	Jackson	MS	People's Advocacy Institute	WSTZ-FM, WKXI-FM
61	232214	Penns Grove	NJ	Pentecostal Church Of Penns Grove	WUMR(FM), WKVP(FM)
61	231724	Glen Mills	PA	Corelink Ministries	WUMR(FM), WKVP(FM)
61	231631	Newtown Square	PA	Padio Phila Inc.	WUMR(FM), WKVP(FM)
62	233032	Boulder City	NV	Faith Christian Church	KSNE-FM
62	232171	Henderson	NV	Mi TV	KSNE-FM
65	231985	Cleveland	OH	Institutional Community Development Corporation	WDOK(FM)
65	232558	Cleveland	OH	Latinos International Festival, Inc.	WDOK(FM)
68	231971	Mason	OH	Liberty West Broadcasting Inc.	WOXY(FM), WRRM(FM)
69	232903	Tulsa	OK	Tulsarise	KTBT(FM)
69	233152	Tulsa	OK	Friends Of The Jazz Depot, Inc.	KTBT(FM)
70	232807	Abbottstown	PA	The Intersection Church	WSOX(FM), W237EN
70	233037	New Oxford	PA	Community Media Of South Central PA	WSOX(FM)
74	232897	Aguada	PR	Spirit Entertainment Inc.	WQHD-LP, WVID(FM)

MX Group	File Number	City	State	Applicant	2nd adj stations
75	231892	Caguas	PR	Iglesia Generacion De Fuego, Inc.	WIPR-FM, WYAS(FM)
75	232383	Caguas	PR	Iglesia Cristiana Pentecostal La Gran,Cosecha, Inc.	WIPR-FM
75	233063	Canovanas	PR	Cantares FM Media Group Inc.	WIPR-FM, WYAS(FM)
75	232369	Cayey	PR	Fundacion Hazlos Sonreir Complices De Amor Inc.	WIPR-FM
76	232124	Mayaguez	PR	Northwest Broadcasting Corporation	WNOD(FM)
77	231742	Cabo Rojo	PR	Armonia Communications, Inc.	WUKQ-FM
77	232279	Lajas	PR	Cristo Se Interesa Por Ti, Inc.	WUKQ-FM
78	233100	Ponce	PR	Onda Cultural Del Sur Inc.	WIPR-FM, WIDA-FM
79	231769	Ponce	PR	Imparcial, Inc.	WPUC-FM, WRTU(FM)
79	232576	Ponce	PR	Iglesia Pabellon De La Victoria Ponce Inc.	WPUC-FM, WRTU(FM)
80	231748	Quebradillas	PR	Alimentame Rescatame Adoptame Corp.	WPUC-FM, WRTU(FM)
84	232700	Greenville	SC	Ubuntu Institute For Community Development	WFBC-FM, WKVG(FM)
86	232370	Memphis	TN	Citizens Against Unfair Financial Practices	WMC-FM
88	232705	Allen	TX	Ministerios La True Radio	KMVK(FM), KZZA(FM)
88	233069	Plano	TX	Pulse Media Broadcasting Group	KMVK(FM), KZZA(FM)
89	232613	Amarillo	TX	Panhandle Pride, Inc.	KATP(FM)
90	232293	Fort Worth	TX	CPC of the WMM - Fort Worth, TX - One Inc.	KPLX(FM), KJKK(FM)
90	233004	Fort Worth	TX	LGBTQ Saves	KPLX(FM), KJKK(FM)
92	232762	Carrollton	TX	CPC of the WMM-Carrollton, TX-One, Inc.	KKXT(FM), KZPS(FM)
92	231771	Lancaster	TX	Cedars Community Development Corporation	KKXT(FM), KZPS(FM)
92	231989	Seagoville	TX	Iglesia De Cristo Kadosh	KKXT(FM), KZPS(FM)
96	232347	McAllen	TX	Trucha	KBFM(FM), KJAV(FM)
96	232077	Pharr	TX	Pharr Center Church	KBFM(FM), KJAV(FM)
99	231602	Tomball	TX	Global Educations Ministries Inc.	KAMA-FM, KRBE(FM)
99	232111	Tomball	TX	Rosehill Amateur Radio Club	KAMA-FM, KRBE(FM)
100	232349	Charlottesville	VA	Virginia College & Community Radio Alliance	WQMZ(FM)
103	232199	Pasco	WA	God's New Generation - Nueva Generacion De Dios	KQFO(FM)
103	232753	Pasco	WA	Casa De Avivamiento	KQFO(FM)
104	233127	Spokane	WA	Spokane Word	KMBI-FM
104	232991	Spokane	WA	Latinos En Spokane	KMBI-FM
104	233062	Spokane	WA	Living Stone Church Of Spokane	KMBI-FM, KPKL(FM)
106	232083	Mc Farland	WI	Iglesia Pentecostal Jehova Rafa	WZEE(FM)
106	233168	Monona	WI	Madison Christian LPFM Radio, Inc.	WZEE(FM), W277AE

MX Group	File Number	City	State	Applicant	2nd adj stations
107	231506	Milwaukee	WI	Souls Harbor Baptist Church, Inc.	WUWM(FM)
107	232321	Milwaukee	WI	CPC of the WMM - Milwaukee WI - One Inc.	WUWM(FM)

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

In the Matter of)
)
Amendment of Part 90 of the Commission's Rules) WP Docket No. 07-100
)

EIGHTH REPORT AND ORDER

Adopted: October 18, 2024

Released: October 22, 2024

By the Commission: Commissioner Gomez not participating.

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I. INTRODUCTION

1. In this *Eighth Report and Order*, we take another major step towards ensuring that the 4940–4990 MHz band (4.9 GHz band) is efficiently and intensely utilized in support of public safety missions nationwide. To that end, we bolster the coordinated nationwide approach to the band that the Commission established in its *Seventh Report and Order*¹ in which it adopted a nationwide Band Manager

¹ *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, 38 FCC Rcd 704 (2023) (*Seventh Report and Order* or *Ninth Further Notice*); see also *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Erratum (2023).

framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals—and ensure that the 4.9 GHz band is put to more robust use nationwide in the near term—the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that protects incumbent operations. In addition to expanding the Band Manager’s responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, we also reaffirm our commitment to the nationwide Band Manager framework and clarify the Band Manager’s responsibilities to address the new rules we adopt herein.

II. BACKGROUND

A. Current 4.9 GHz Band Rules

2. The current licensing and regulatory regime for the 4.9 GHz band is significantly different from other public safety bands. As an initial matter, the 4.9 GHz band has less restrictive eligibility requirements; unlike the 700 MHz band which has statutorily defined eligibility criteria,² or the Public Safety Pool which has Commission-defined eligibility criteria,³ an entity need only provide public safety services to be eligible for a 4.9 GHz license.⁴ Licensees include state and local government entities,⁵ as well as nongovernmental organizations (NGOs) that support communications essential to services having the sole or principal purpose of protecting the safety of life, health, or property.⁶

3. The 4.9 GHz band is shared amongst eligible licensees—no licensee has a right to exclusive, or interference free, access to the band.⁷ Similarly, unlike other public safety bands that only authorize operations on specific frequencies and in clearly delineated geographic areas, 4.9 GHz band licenses authorize operation on any channel over the entire 50 megahertz of the band and are generally issued for the geographic area encompassing the legal jurisdiction of the licensee.⁸ Moreover, a 4.9 GHz licensee has blanket authority to operate base stations and mobile units (including portables and handheld units) and/or temporary (one year or less) fixed stations anywhere within its authorized area.⁹ Our rules also permit eligible entities to license fixed point-to-point (P-P) and point-to-multipoint (P-MP) operations on specific channels within their jurisdictions, although only those fixed sites that are used to deliver broadband service are accorded “primary” status under the rules.¹⁰

² See 47 U.S.C. § 337(f)(1)(B).

³ See 47 CFR § 90.20.

⁴ *Id.* § 90.1203(a) (referring to 47 CFR § 90.523(b), which allows a nongovernmental organization that provides services, the sole or principal purpose of which is to protect the safety of life, health, or property, to hold a license in the band).

⁵ *Id.* § 90.523(a).

⁶ *Id.* § 90.523(b). In addition, to establish eligibility, a NGO must secure and maintain support for the right to operate its system from a state or local governmental entity whose mission is to oversee or provide services that have the sole or principal purpose of protecting the safety of life, health, or property and the NGO must provide a written certification of such support in any submitted application. *Id.*

⁷ *Id.* § 90.1209(a).

⁸ *Id.* § 90.1207(a). In the case of a NGO, the license is issued for the legal jurisdiction of the state or local government entity supporting the NGO. *Id.* Some licenses are issued for only part of a licensee’s jurisdiction, for example, an area defined by a point and a specified radius of operation.

⁹ *Id.* § 90.1207(b).

¹⁰ *Id.* § 90.1207(d).

4. While licensees in this band are geographically limited to the state or local jurisdictions specified on the license,¹¹ they are also permitted to operate base stations with mobile units and temporary fixed stations outside their authorized area with the permission of the jurisdiction in which they will operate.¹² This licensing scheme means that licenses often overlap with one or more geographic area licenses covering a given location and authorizing operations on the same spectrum, as well as multiple fixed-site licenses in the same area.¹³ The Commission established this flexible structure based on public safety agencies' unique history of coordination with one another in the use of shared frequencies.¹⁴ Our 4.9 GHz rules, however, historically have not specified a formal coordination requirement.¹⁵

B. Current State of the 4.9 GHz Band

5. There are 3,676 licenses currently issued in the band.¹⁶ This includes over 130 statewide area licenses, over 1,100 countywide area licenses, and over 2,400 other licenses, either geographic area licenses, other types of geographic licenses (such as for a group of counties, a city, or parts of one or more cities), or for fixed sites.¹⁷ Most of the United States and U.S. territories are covered by at least one statewide license.¹⁸ In some states, multiple state entities hold statewide licenses.¹⁹ Licensees use P-P and P-MP operations, to facilitate video streaming, communications system backhaul, and data connections for advanced devices.²⁰ Commenters have suggested that emerging and potential uses of the band may include robotics and airborne operations, as well as the Internet of Things.²¹

¹¹ *Id.* § 90.1207.

¹² *Id.* § 90.1207(c).

¹³ For example, a common scenario might involve a statewide license held by the state police, a county-wide license held by the sheriff's department, and fixed-site licenses operating in the same area by various public safety entities. Licensees informally cooperate with one another to ensure that their operations do not cause interference and to resolve interference if it occurs.

¹⁴ *The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32, Memorandum Opinion and Order and Third Report and Order, 18 FCC Rcd 9152, 9164, para. 28 (2003) (*4.9 GHz Third Report and Order*) (noting that "many public safety agencies already have procedures or protocols in place with nearby jurisdictions to govern frequency sharing during situations requiring joint operations," and further explaining that "the nature of public safety operations in general will . . . facilitate this sharing requirement").

¹⁵ 47 CFR §§ 90.175(j)(22), 90.1209(b).

¹⁶ *Universal Licensing System*, FCC, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp> (last visited Oct. 7, 2024).

¹⁷ For example, Southwestern NH District Fire Mutual Aid holds a license, call sign WQNM520, covering three counties in New Hampshire.

¹⁸ The following states and territories are not covered by a statewide license: American Samoa, Georgia, Iowa, Kansas, the Northern Mariana Islands, and South Dakota.

¹⁹ For example, the State of Maryland holds a statewide 4.9 GHz band license (WPYX998), as do four other agencies of the Maryland state government (Maryland State Highway Administration, WQAN291; Maryland Department of Information Technology, WPYZ305; Maryland DNR, WPYT728; and Maryland MIEMSS, WQAL856).

²⁰ *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, 36 FCC Rcd 15032, 15036, para. 9 (2021) (*2021 Order on Reconsideration or Eighth Further Notice*).

²¹ Letter from Ralph A. Haller, Chairman, National Public Safety Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 3 (filed Aug. 13, 2021) (NPSTC Aug. 13, 2021, *Ex Parte*) ("The NPSTC recommendations incorporate provisions for new public safety operations that advances in robotics, the internet of things (IoT) and unmanned aerial systems technologies are generating."); *see also* EWA Nov. 29, 2021, Comments at 8–9 ("Designating specific 4.9 GHz channels for UAS, for robotics, and for IoT technologies will

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C. Procedural History

6. In 2002, the Commission designated the 4.9 GHz band for public safety use.²² Operations in the band are limited to those in support of public safety operations,²³ and licenses for the band are exclusively available to public safety entities or those operating in support of public safety.²⁴ Since the designation of the band, the rules have evolved in response to changing conditions, including band use and technological innovation.²⁵ In these endeavors, the Commission has sought to increase the use of the band with the goal of maximizing the spectrum's potential.²⁶

7. *4.9 GHz Band Freeze.* In an effort to stabilize the band while the Commission considers changes to its rules as part of this proceeding,²⁷ on September 8, 2020, the Public Safety and Homeland Security Bureau (PSHSB) and the Wireless Telecommunications Bureau (WTB) (collectively, the Bureaus) announced a freeze on applications in the 4.9 GHz band.²⁸ On October 21, 2021, pursuant to the *2021 Order on Reconsideration*, the Bureaus amended the freeze to allow those with existing 4.9 GHz licenses to seek to modify those licenses, whether for permanent fixed sites or geographic areas, as permitted under the rules.²⁹

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further promote efficient use of this spectrum.”); IAFC Nov. 23, 2021, Comments at 6–7 (“The IAFC also agrees with NPSTC that 4.9 GHz spectrum can be instrumental in supporting emerging technologies beneficial to public safety, including aeronautical, both manned and unmanned (UAS), robotics and the public safety Internet of Things (PS IoT).”). While section 90.1205(c), 47 CFR § 90.1205(c), of the Commission’s rules currently prohibits aeronautical mobile operations, some operations have been authorized through rule waiver. *See, e.g.,* City of Long Beach, California, call sign WQJE424.

²² *See The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32, Second Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 3955 (2002) (*Second Report and Order*).

²³ 47 CFR § 90.1203(b).

²⁴ *Id.* § 90.1203(a).

²⁵ *See, e.g., 2021 Order on Reconsideration and Eighth Further Notice*, 36 FCC Rcd 15032; *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking, 36 FCC Rcd 1958 (2020) (*Sixth Report and Order* or *Seventh Further Notice*); *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Sixth Further Notice of Proposed Rulemaking, 33 FCC Rcd 3261 (2018) (*Sixth Further Notice*).

²⁶ The Commission has also received extensive input from public safety organizations such as the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Public Safety Telecommunications Council (NPSTC). *See, e.g.,* APCO International, 4.9 GHz Task Force Report (2015), <https://ecfsapi.fcc.gov/file/60001325364.pdf>, (APCO Sept. 28, 2015 Report); NPSTC, 4.9 GHz National Plan Recommendations Final Report (2013), https://npstc.org/download.jsp?tableId=37&column=217&id=3222&file=4_9_GHz_National_Plan_Report_131024.pdf, (NPSTC Oct. 24, 2013 Plan).

²⁷ This proceeding began in 2007, and has been the subject of ongoing efforts from the Commission and the public safety community to make the most of this valuable spectrum. *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Notice of Proposed Rulemaking, 22 FCC Rcd 9595 (2007).

²⁸ *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940–4990 MHz Band*, WP Docket No. 07-100, Public Notice, 35 FCC Rcd 9522 (PSHSB/WTB 2020) (*Freeze Public Notice*). Pursuant to the *Freeze Public Notice*, the Bureaus stopped accepting applications for new or modified licenses, including both geographic area licenses and individual fixed-site licenses. *Id.* The *Freeze Public Notice* also noted that any 4.9 GHz licensee could seek relief from the freeze through the Commission’s waiver provisions. *Id.* at 9523.

²⁹ *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Modify Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940–4990 MHz Band*, WP Docket No. 07-100, Public Notice, 36 FCC Rcd 15185 (PSHSB/WTB 2021) (*Freeze Modification Public Notice*); *2021 Order on Reconsideration*, 36 FCC Rcd at 15041–42, para. 25. In the *2021 Order on Reconsideration* the

(continued....)

8. *2021 Order on Reconsideration and Eighth Further Notice.* On September 30, 2021, the Commission adopted the *2021 Order on Reconsideration and Eighth Further Notice*.³⁰ The *2021 Order on Reconsideration*, which was issued before the framework adopted in the *Sixth Report and Order* could become effective, granted three public safety organization petitions³¹ insofar as they sought reconsideration of the rules adopted in the *Sixth Report and Order*.³² The Commission agreed that, rather than allowing state lessors to use and lease the band for non-public safety purposes, the public interest would be better served by considering other models, in particular those that advanced a single, nationwide framework for the band. In the *Eighth Further Notice*, the Commission sought comment on important technical and policy questions concerning how to maximize the use of the band to support public safety, leverage technological advancements (such as 5G), foster a robust equipment market, and address non-public safety use of the band on a nationwide basis.³³ The Commission also sought comment on implementation of a single, nationwide framework and sought comment on requiring formal frequency coordination in the 4.9 GHz band to support interference protection and increase public safety confidence in using the band.³⁴ In addition, the Commission asked about the role of the Regional Planning Committees (RPCs), and whether, if it adopted frequency coordination requirements, the RPCs have the technical expertise and resources to serve as coordinators.³⁵

9. The Commission also solicited feedback on several alternatives to promote innovation, stimulate investment, and facilitate robust public safety access in the 4.9 GHz band.³⁶ In particular, the Commission sought comment on establishing a database that would contain consistent and reliable information about what spectrum is available and where and how it is being used.³⁷ Alongside these potential changes, the Commission inquired about allowing non-public safety use of the band to

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Commission gave the example that an incumbent licensee is permitted to add base stations within its jurisdiction. 47 CFR § 90.1207(c). Also, an incumbent licensee may continue to seek an individual station license if required pursuant to Commission rule section 90.1207(b)(1). *Id.* § 90.1207(b)(1). In addition to new deployments within its jurisdiction pursuant to an existing geographic area license, a public safety entity may expand operations through leasing from a State Lessor. *2021 Order on Reconsideration*, 36 FCC Rcd at 15041–42, para. 25.

³⁰ *2021 Order on Reconsideration and Eighth Further Notice*, 36 FCC Rcd at 15032. On May 27, 2021, the Commission granted the Public Safety Spectrum Alliance’s Petition for Stay of the *Sixth Report and Order*, which stayed the implementation of the new leasing framework adopted in the *Sixth Report and Order* for the 4.9 GHz band, which had not yet become effective, pending a Commission decision on the petitions for reconsideration filed in this proceeding. *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Order, 36 FCC Rcd 9761 (2021) (*Stay Order*).

³¹ Petitions for reconsideration were filed by PSSA, APCO, and NPSTC. *2021 Order on Reconsideration*, 36 FCC Rcd at 15038–42, paras. 16–26.

³² In the *Sixth Report and Order and Seventh Further Notice*, the Commission adopted a leasing framework that granted states the option to lease spectrum access through a single statewide entity designated as the State Lessor to state and local entities—whether public safety or non-public safety—as well as to commercial and other private entities in their jurisdictions. *Sixth Report and Order*, 36 FCC Rcd at 1959, para. 2. In the *Seventh Further Notice*, the Commission, among other things, proposed an expansion of the new state-based framework to include public safety operations and proposed to amend its 4.9 GHz licensing rules to limit future licensing to state entities seeking a statewide license in states without an existing statewide license for purposes of this coordination. *Seventh Further Notice*, 36 FCC Rcd at 1977–82, paras. 48–60. State Lessors were also permitted to use the band for non-public safety purposes themselves. *Sixth Report and Order*, 36 FCC Rcd at 1971–72, paras. 35–36.

³³ *Eighth Further Notice*, 36 FCC Rcd at 15042–62, paras. 27–89.

³⁴ *Id.* at 15048–50, paras. 45–50.

³⁵ *Id.* at 15051–52, paras. 54–56.

³⁶ *Id.* at 15052–53, paras. 57–60.

³⁷ *Id.* at 15044–46, paras. 32–36.

encourage a more robust and innovative equipment market without causing harmful interference to public safety operations in the band.³⁸ The Commission, while emphasizing the importance of public safety operations in this band, sought comment on whether allowing non-public safety use could lower equipment and deployment costs and increase efficient use of spectrum, without undermining critical public safety operations. In addition, the Commission sought comment on implementing a nationwide spectrum management framework reflecting public safety input, thereby “promot[ing] more opportunistic use of the 4.9 GHz band without compromising the integrity and security of public safety operations.”³⁹ More specifically, the Commission asked about designating a single entity to serve as a nationwide Band Manager or licensee for the 4.9 GHz band and what its responsibilities would be under such an approach.⁴⁰

10. *Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking.* In January 2023, the Commission adopted the *Seventh Report and Order and Ninth Further Notice* in which it established a comprehensive and coordinated nationwide approach to managing the 4.9 GHz band.⁴¹ In doing so, the Commission solidified the band’s status as public safety spectrum, while also exploring secondary, non-public safety use as agreed to by public safety licensees through a new potential leasing model.⁴² Critical to this vision for the 4.9 GHz band was the addition of a nationwide Band Manager, to be selected based on its expertise and connections to the public safety community.⁴³ The Band Manager was given responsibility for coordinating all operations in the band to ensure that any non-public safety use remains fully secondary to, and preemptible by, public safety operations.⁴⁴

11. The *Seventh Report and Order* also modified our rules to allow for the collection of granular data on public safety operations in the 4.9 GHz band.⁴⁵ The Commission noted that this data combined with a formal coordination structure performed by the Band Manager will improve interference mitigation efforts, bolster public safety confidence in the band, and play a crucial role in the Band Manager’s ability to find opportunities for increasing access into the band.⁴⁶

12. In the *Ninth Further Notice* the Commission sought comment on a range of questions related to the implementation of the new Band Manager model for the 4.9 GHz band adopted in the *Seventh Report and Order*.⁴⁷ Specifically, the Commission sought comment on the Band Manager’s efforts in coordinating public safety operations, in particular mitigating harmful interference and modernizing operations.⁴⁸ Next, the Commission sought comment on the potential integration of the band with broadband networks used by public safety, as well as the Band Manager’s role in that potential process.⁴⁹ The Commission also sought comment on the Band Manager’s role in facilitating leasing to

³⁸ *Id.* at 15054–60, paras. 61–86.

³⁹ *Id.* at 15042–62, paras. 27–89; *see also Sixth Further Notice*, 33 FCC Rcd at 3262, para. 3.

⁴⁰ *Eighth Further Notice*, 36 FCC Rcd at 15050–51, paras. 51–53.

⁴¹ *Seventh Report and Order and Ninth Further Notice.* In 2023, the Bureaus granted a 14-day extension of the time to file comments and reply comments. *See Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Order, 38 FCC Rcd 2303 (WTB/PSHSB 2023).

⁴² *Seventh Report and Order*, 38 FCC Rcd at 711–23, paras. 18–49.

⁴³ *Id.* at 711–16, paras. 18–29.

⁴⁴ *Id.* at 711–21, paras. 18–43.

⁴⁵ *Id.* at 716–18, paras. 30–35.

⁴⁶ *Id.* at 711–24, paras. 18–54.

⁴⁷ *Ninth Further Notice*, 38 FCC Rcd at 732–48, paras. 71–147.

⁴⁸ *Id.* at 732–37, paras. 73–90.

⁴⁹ *Id.* at 736, paras. 87–88.

non-public safety users, how to enable such leasing, how to manage the revenues that arise from it, and how to ensure preemption rights for public safety operations.⁵⁰ We also asked questions related to the implementation of a committee-based selection process for the Band Manager, which mirrors the approach we have taken for selecting clearinghouses and transition coordinators in a number of other bands.⁵¹ Finally, we sought comment on our oversight of the Band Manager, on future licensing of the band, and on other considerations related to the band.⁵² The Commission received 57 comments and reply comments and 148 *ex partes*.

D. FirstNet

13. Congress created FirstNet in 2012 pursuant to the Spectrum Act, which called for the deployment of a NPSBN.⁵³ To that end, the Spectrum Act established FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA)⁵⁴ and required the Commission to grant a license to FirstNet for the 758–769/788–799 MHz band (sometimes referred to as “Band 14”).⁵⁵ Congress authorized FirstNet to exercise all powers specifically granted by the provisions of the Spectrum Act, along with such incidental powers as are necessary to accomplish the purposes of the Spectrum Act.⁵⁶

14. The Spectrum Act required the Commission to “grant a license to [FirstNet] for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.”⁵⁷ Pursuant to this provision, on November 15, 2012, PSHSB granted FirstNet’s initial license, call sign WQQE234, for a period of 10 years.⁵⁸ PSHSB renewed this license in 2023.⁵⁹ In granting the renewal, PSHSB reviewed

⁵⁰ *Id.* at 737–45, paras. 93–134.

⁵¹ *Id.* at 732–47, paras. 135–42.

⁵² *Id.* at 747–50, paras. 143–55.

⁵³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001–6303, 6413, 126 Stat. 156, 201–22, 235–36 (codified at 47 U.S.C. §§ 1401–1443, 1457) (Spectrum Act).

⁵⁴ 47 U.S.C. § 1424(a).

⁵⁵ *See id.* § 1421(a) (“[T]he Commission shall . . . grant a license to the First Responder Network Authority for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.”); *id.* § 1421(b)(1) (“The license granted [to FirstNet under section 1421(a)] shall be for an initial term of 10 years from the date of the initial issuance of the license.”); *see also id.* § 1401(2) (defining “700 MHz D block spectrum” as 758–763/788–793 MHz); *id.* § 1401(14) (defining “existing public safety broadband spectrum” as 763–768/793–798 MHz and 768–769/798–99 MHz).

⁵⁶ *Id.* § 1426(a).

⁵⁷ *Id.* § 1421(a).

⁵⁸ On September 7, 2012, PSHSB issued, on delegated authority, a *Report and Order* adopting rules implementing the mandate of the Spectrum Act to grant a license to FirstNet. *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012*, WP Docket No. 12-94, Report and Order, 27 FCC Rcd 10953 (PSHSB 2012) (*FirstNet Report and Order*). On September 25, 2012, FirstNet submitted a request for issuance of its license as contemplated in the *FirstNet Report and Order*. *See* Letter from Samuel Ginn, Chairman of the Board, First Responder Network Authority, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau (dated Sept. 25, 2012). The Bureau granted the license in the Commission’s Universal Licensing Service (ULS) on November 15, 2012, under call sign WQQE234.

⁵⁹ *First Responder Network Authority, Nationwide Public Safety Broadband Network, Renewal of SP-700 MHz Public Safety Broadband Nationwide License Radio Service*, Order, 38 FCC Rcd 4989 (PSHSB 2023) (*FirstNet Renewal Order*). The Bureau renewed FirstNet’s license for ten years from the November 15, 2022, expiration of the initial license, or for the remaining period of its authorization from Congress, whichever is sooner. *Id.* at 1. The Spectrum Act provides that FirstNet’s statutory authority shall terminate 15 years after the statutory date of enactment, i.e., on February 22, 2027, unless Congress extends that authority. 47 U.S.C. § 1426(f).

FirstNet’s compliance with the Spectrum Act’s requirements and concluded that FirstNet has sufficiently demonstrated compliance with the requirements of the Spectrum Act to warrant renewal of its license.⁶⁰ PSHSB noted that as a Commission licensee, FirstNet remains subject to the Commission’s statutory and regulatory authority, and that PSHSB will continue to monitor and oversee FirstNet’s performance.⁶¹

E. Summary of the Record

15. As noted above, in the *Ninth Further Notice*, the Commission sought comment on a range of issues related to implementation of the nationwide Band Manager framework adopted in the *Seventh Report and Order*.⁶² The Commission sought comment on the Band Manager’s role in mitigating harmful interference to public safety licensees, modernizing operations in the band, potential integration of the band with broadband networks used by public safety entities, and facilitating leasing to non-public safety users.⁶³ The Commission also sought comment on implementing a committee-based process for selecting the Band Manager, among other issues.⁶⁴

16. Commenting parties overwhelmingly support the Commission’s decision in the *Seventh Report and Order* to solidify the band’s status as a public safety band,⁶⁵ and were almost universally in agreement that the Band Manager’s primary responsibility “should be to protect public safety licensees from harmful interference.”⁶⁶ Commenting parties also support the Band Manager promoting 5G and other advanced technologies in the band⁶⁷ and integrating the band in some manner with public safety

⁶⁰ *FirstNet Renewal Order*, 38 FCC Rcd at 4992–99, paras. 10–37.

⁶¹ *Id.* at 4999, para. 38.

⁶² *Ninth Further Notice*, 38 FCC Rcd at 732, paras. 71–72.

⁶³ *Id.* at 732–45, paras. 75–134.

⁶⁴ *Id.* at 745–50, paras. 135–55.

⁶⁵ AASHTO Apr. 10, 2023, Comments at 2 (stating that it is “vital that the 4.9 GHz band be preserved and held separate for use by state and local agencies to enhance public safety”); APCO Apr. 13, 2023, Comments at 1 (stating that “success for the band will depend upon an unwavering commitment to preserving public safety use of 4.9 GHz”); BART Mar. 30, 2023, Comments at 1 (strongly supporting “primacy of its public safety operations” in the 4.9 GHz band); IAFC Apr. 13, 2023, Comments at 1 (stating that it “appreciates the FCC’s interest in promoting better utilization of the 4.9 GHz band for public safety”); iCERT Apr. 10, 2023, Comments at 1 (supporting “preservation of the band for public safety use”); Motorola Apr. 13, 2023, Comments at 3 (stating that it supports “retaining the band’s primary use for public safety organizations.”); PSSA Apr. 12, 2023, Comments at 2 (supporting “preserving the integrity and priority of public safety communications within the [4.9 GHz] band”); TDD May 15, 2023, Reply at 3 (citing APCO Apr. 13, 2023, Comments at 1, iCERT Apr. 10, 2023, Comments at 2, Motorola Apr. 13, 2023, Comments at 3).

⁶⁶ BART Mar. 30, 2023, Comments at 4; *see also* AASHTO Apr. 10, 2023, Comments at 3 (“The bottom line is that the incumbent public safety licensees must be protected [from harmful interference].”); APCO Apr. 13, 2023, Comments at 10 (stating that it “generally supports tasking the band manager with responsibility for establishing interference criteria for public safety operations in the band”); Caltrans Apr. 11, 2023, Comments at 7 (stating that the “[a]bsence of harmful interference complaints” should be used as a performance measure for effective frequency coordination); EEI Apr. 13, 2023, Comments at 11 (“One of the primary tasks for a nationwide Band Manager should be ensuring that protection from harmful interference is strictly observed.”); Motorola Apr. 13, 2023, Comments at 2 (urging “the Commission to establish a framework where the existing Part 90 FCC recognized frequency coordinating committees are a part of the solution to coordinate access to the band, prevent harmful interference, and mitigate harmful interference complaints”); WISPA Apr. 13, 2023, Comments at 2 (stating that it “strongly agrees with the Commission on the necessity of protecting public safety operations from harmful interference . . .”); MTA May 15, 2023, Reply at 5 (citing BART Mar. 30, 2023, Comments). *But see* GWTC May 1, 2023, Reply at 2 (stating that “discussion of an appropriate interference standard to separate co-channel or adjacent channel systems does not need an immediate decision . . .”).

⁶⁷ APCO Apr. 13, 2023, Comments at 11 (stating that it “agrees that designating one or more preferred (but not required) standards could make coordination and facilitating non-public safety use easier”); T-Mobile May 15, 2023, (continued....)

broadband networks.⁶⁸ On the other hand, commenting parties were split on the type of leasing model that the Commission could implement to facilitate use of the band by non-public safety entities.⁶⁹ Commenting parties were also split over whether the Band Manager selection committee should be comprised solely or mostly of public safety representatives⁷⁰ or whether it should include a more diverse array of stakeholders.⁷¹

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Reply at 4 (stating “commercial use of the 4.9 GHz band will complement the wireless industry’s current robust public safety activities . . . [and that] . . . [t]he latest generation of wireless networks—5G—has even further improved first responders’ response times and their ability to quickly assess emergency situations”). *But see* AASTHO Apr. 10, 2023, Comments at 6 (stating that it “believes [5G integration] will happen naturally, as public service agencies buy new equipment and systems”).

⁶⁸ APCO Apr. 13, 2023, Comments at 10–11 (“The band manager should explore a variety of opportunities to leverage excess spectrum and facilitate innovation in the band, including leasing spectrum to operators of [public safety] broadband networks, so long as public safety licensees are fully protected.”); IAFC Apr. 13, 2023, Comments at 2 (“In order to ensure integrated data flows on the incident scene, data and other communications on both the FirstNet network and the 4.9 GHz band should be integrated to present a clear picture of the incident and the responding resources and personnel to the incident commander.”); Maryland Apr. 13, 2023, Comments at 4 (“[T]he Band Manager should explore opportunities to lease spectrum . . . to operators of broadband networks used by public safety in other frequency bands.”); Corning May 15, 2023, Reply at 4 (“Integration of the 4.9 GHz band with the NPSBN must be seamless and automatic to provide end users with wireless communications free of delays which is paramount to the efficient and effective operation of public safety services.”); Nextivity May 15, 2023, Reply at 1 (stating that integration with the FirstNet will “facilitate the availability of 5G and other advanced broadband communications and services, and ensure full interoperability of all public safety broadband communications nationwide, avoiding piecemeal, parallel networks”).

⁶⁹ APCO Apr. 13, 2023, Comments at 5–8; WISPA Apr. 13, 2023, Comments at 11; MTA May 15, 2023, Reply at 8 (supporting Model 1 leasing). *But see* AASHTO May 15, 2023, Comments at 6–7; BART Mar. 30, 2023, Comments at 12–13; Caltrans Apr. 11, 2023, Comments at 6; EEI Apr. 13, 2023, Comments at 11–12; FPL Apr. 13, 2023, Comments at 6; UTC Apr. 13, 2023, Comments at 5–6; Cal OES May 15, 2023, Reply at 5 (supporting Model 2 leasing).

⁷⁰ APCO Apr. 13, 2023, Comment at 22 (“If the Commission concludes that non-public safety entities should be represented, the public safety members of the committee should comprise a supermajority.”); IAFC Apr. 13, 2023, Comments at 2 (“[T]he selection committee should have a clear majority of public safety representatives, who have experience in use of new public safety technologies on the nation’s incident scenes.”); Maryland Apr. 13, 2023, Comments at 2 (stating the selection committee should be “heavily weighted” with public safety representatives “to ensure that public safety’s needs and concerns are adequately considered in the selection of the Band Manager”); AASHTO May 15, 2023, Reply at 2–3 (stating that it favors a “majority or exclusive public safety participation in the Band Manager or the Selection Committee”); Cal OES May 15, 2023, Reply at 6 (urging “the Commission to limit the selection committee to representatives from incumbent public safety licensees”); Major Cities May 15, 2023, Reply at 2 (affirming support for “a public safety majority representing incumbent users on the band manager selection committee”); MTA May 15, 2023, Reply at 6 (urging that “the majority of the [Selection] Committee [should be] comprised of public safety members”).

⁷¹ American Petroleum Institute, Enterprise Wireless Alliance, Forestry Conservation Communications Association, International Municipal Signal Association, National Sheriffs’ Association, Utilities Technology Council Apr. 13, 2023, Comments at 6 (Coalition) (suggesting the selection committee consist of “public safety, enterprise and CII entities”); EEI Apr. 13, 2023, Comments at 10 (stating that the “Commission should require that this selection committee includes diverse representation from key stakeholder, including non-public safety entities, such as CII entities, like electric companies”); Federated Wireless Apr. 13, 2023, Comments at 6 (stating it believes “the Commission should continue to follow its historical practice and include representatives from the non-public safety community on its Band Manager selection committee”); iCERT Apr. 10, 2023, Comments at 5–6 (stating it “agree[s] that a nine-person Selection Committee would be appropriate, with five individuals representing the interests of public safety and four individuals representing the interests of non-public safety licensees”); UTC Apr. 13, 2023, Comments at 13 (stating that it “believes that nine representatives – five representing public safety and four representing non-public safety – would be sufficient”); WISPA Apr. 13, 2023, Comments at 18 (stating “the
(continued....)

17. *PSSA Proposal.* Throughout the course of this proceeding, the Public Safety Spectrum Alliance (PSSA) has advocated for the preservation of existing incumbent licensees' operations while also suggesting ways in which the Commission could increase utilization, enhance public safety coordination, and incorporate the latest commercially available technologies into the band.⁷² In comments to the *Ninth Further Notice*, PSSA, which describes itself as an "alliance amongst the nation's leading public safety officials and organizations", stated that it appreciated the Commission's decision to create "a nationwide framework" for the 4.9 GHz band which preserves "the integrity and priority of public safety communications within the band."⁷³ Nonetheless, PSSA suggested that "several of the details as proposed for comment [in the *Ninth Further Notice*], if implemented in the manner suggested, will not necessarily accomplish the Commission's and public safety's goals effectively."⁷⁴

18. In a subsequent *ex parte*, PSSA suggested that all of these goals are attainable by integrating FirstNet's NPSBN into the 4.9 GHz band.⁷⁵ PSSA further clarified its proposal by suggesting the Commission: (1) assign a nationwide overlay license to a single Band Manager and adopt rules providing that the overlay licensee engage in a sharing agreement with FirstNet pursuant to section 2.103 of the Commission's rules; (2) ensure that the Band Manager selection committee adopts robust eligibility criteria to ensure that the entity chosen to serve as the Band Manager is well positioned to succeed; and (3) make targeted changes to section 2.103 to provide that FirstNet will have access to the 4.9 GHz band pursuant to a nationwide sharing arrangement with the Band Manager.⁷⁶ Next, PSSA specified that the Commission should clarify that the Band Manager's responsibilities include: (1) protecting incumbent operations from harmful interference; and (2) entering into a sharing arrangement with FirstNet.⁷⁷ Finally, PSSA suggested that the Commission should maintain its freeze on new entrants into the band and should require incumbent licensees to surrender spectrum that they are not using.⁷⁸ The Coalition for Emergency Response and Critical Infrastructure (CERCI)⁷⁹ submitted a response arguing against many of

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selection committee should include representatives of non-public safety fixed wireless providers"); GWTCA May 11, 2023, Reply at 5 (affirming its belief "that the Selection Committee should include public safety and industrial representatives").

⁷² See, e.g., PSSA Apr. 12, 2023, Comments; PSSA May 15, 2023, Reply; Letter from Jeffrey D. Johnson, Public Safety Spectrum Alliance, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Apr. 23, 2024) (PSSA Apr. 23, 2024, *Ex Parte*); Letter from Jeffrey D. Johnson, Public Safety Spectrum Alliance, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Dec. 6, 2023) (PSSA Dec. 6, 2023, *Ex Parte*); Letter from Jeffrey D. Johnson, Public Safety Spectrum Alliance, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 13, 2023) (PSSA Jul. 13, 2023, *Ex Parte*).

⁷³ PSSA Apr. 12, 2023, Comments at 1–2.

⁷⁴ *Id.* at 4.

⁷⁵ PSSA Apr. 23, 2024, *Ex Parte*.

⁷⁶ *Id.* at 2–4. In *ex partes* expressing support for PSSA's proposal, NREMT and AT&T suggest that section 2.103(b) of the Commission's rules currently allows FirstNet access into the band. Letter from Mike McEvoy, Board Chair, National Registry of EMTs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 30, 2024) (NREMT May 30, 2024, *Ex Parte*); Letter from Michael P. Goggin, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 20, 2024) (AT&T Jun. 20, 2024, *Ex Parte*).

⁷⁷ PSSA Apr. 23, 2024, *Ex Parte* at 4.

⁷⁸ *Id.*

⁷⁹ CERCI's members include the California State Sheriffs' Association, Competitive Carriers Association, Edison Electric Institute, iCERT, Major Cities Chiefs Association, National Association of Women Law Enforcement Executives, the National Sheriffs' Association, National Rural Electric Cooperative Association, T-Mobile USA, Inc., UScellular, and Verizon. See Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 7–8 (filed Feb 6, 2024) (CERCI Feb. 6, 2024, *Ex Parte*).

PSSA's proposals and raising a number of concerns were it to be implemented.⁸⁰ Since then, there have been significant exchanges in the record between CERCI and other entities supportive of its views,⁸¹ and PSSA and filers aligned with its proposal.⁸²

⁸⁰ CERCI May 10, 2024, *Ex Parte*.

⁸¹ See, e.g., Letter from Jonathan F. Thompson, Executive Director and CEO, National Sheriffs' Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 14, 2024); Letter from Jim Tymon, Executive Director, Operations Security & Emergency Response Policy, American Petroleum Institute, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 20, 2024); Letter from Jonathan F. Thompson, Executive Director and CEO, National Sheriffs' Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 28, 2024) (NSA Jun. 28, 2024, *Ex Parte*); Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 3, 2024) (CERCI Jun. 3, 2024, *Ex Parte*); Letter from William Chapman, Statewide Interoperability Coordinator, Oregon Department of Emergency Management, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 3, 2024) (SWI Jun. 3, 2024, *Ex Parte*); Letter from Laura Cooper, Executive Director, Major Cities Chiefs Association, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 3, 2024) (MCCA et al. Jun. 3, 2024, *Ex Parte*); Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 6, 2024) (CERCI Jun. 6, 2024, *Ex Parte*); Letter from William H. Johnson, Senior Vice President, Federal Regulatory & Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 11, 2024) (Verizon Jun. 11, 2024, *Ex Parte*); Letter from Ferdinand Milanese, Chief, Office of Radio Communications, State of California, Department of Transportation, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 19, 2024); Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 25, 2024) (CERCI Jun. 25, 2024, *Ex Parte*); Letter from William H. Johnson, Senior Vice President, Federal Regulatory & Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 1, 2024) (Verizon Jul. 1, 2024, *Ex Parte*); Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 7, 2024) (CERCI Jul. 7, 2024, *Ex Parte*); Letter from Aryeh B. Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 9, 2024) (EEI Jul. 9, 2024, *Ex Parte*); Letter from Louis Peraertz, Vice President of Policy, WISPA, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 11, 2024) (WISPA Jul. 11, 2024, *Ex Parte*). In addition, numerous parties expressed opposition to PSSA's proposal by submitting form-like letters in this proceeding. See, e.g., Letter from Wade Kapszukiewicz, Mayor, City of Toledo, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 21, 2024).

⁸² See, e.g., PSSA Apr. 23, 2024, *Ex Parte* at 2–4; Letter from Gary David Gray, et al., Former Presidents of APCO International, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Apr. 5, 2024) (Former Presidents of APCO Apr. 5, 2024, *Ex Parte*); Letter from Kevin Green, Counsel, First Responder Network Authority, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Apr. 8, 2024) (FirstNet Apr. 8, 2024, *Ex Parte*); Letter from Jeff Johnson, Public Safety Spectrum Alliance, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 24, 2024) (PSSA May 24, 2024, *Ex Parte*); Letter from John S. Butler, President and Board Chair, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed May 28, 2024); NREMT May 30, 2024, *Ex Parte*; AT&T Jun. 20, 2024, *Ex Parte*; Letter from Earnest Malone, President, Metropolitan Fire Chiefs Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jul. 8, 2024) (MFCA Jul. 8, 2024, *Ex Parte*); Letter from Claude Cummings, Jr., President, et al., Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Aug. 1, 2024) (CWA Aug. 1, 2024, *Ex Parte*); Letter from Jonathan Kanzigg, President, Southeastern Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Aug. 4, 2024). In addition, numerous parties expressed support for PSSA's proposal by submitting form-like letters in this proceeding. See, e.g., Letter from Chad Russell, President, Kansas State Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 5, 2024).

III. EIGHTH REPORT AND ORDER

19. In the *Seventh Report and Order*, the Commission adopted rules that created a comprehensive and coordinated nationwide approach to the 4.9 GHz band, centralizing management in a single Band Manager, while creating a mechanism to potentially leverage new technologies, lower equipment costs, attract new users, facilitate effective frequency coordination and interference protection, and promote interoperability.⁸³ As discussed above, in the corresponding *Ninth Further Notice* the Commission sought comment on the implementation of many of the policy determinations made in the *Seventh Report and Order*, including the ultimate rights and responsibilities of the nationwide Band Manager.

20. Today, we find that our topline goals of preserving and expanding use to a variety of primary public safety operations would be best served by assigning a nationwide overlay license to the Band Manager. Rather than directly operating in the band, the Band Manager, once selected, will be authorized to enter into a sharing agreement with FirstNet to enable use of unassigned portions of the 4.9 GHz band as part of FirstNet's NPSBN in a manner that protects incumbent operations. We also clarify that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to operate within their service areas consistent with section 90.1203(b) of the Commission's rules. After review of the record, we conclude that allowing the Band Manager to enter into a sharing agreement with FirstNet to enable broader access into the band by FirstNet's NPSBN, while also working with public safety licensees to coordinate and rationalize their use of the band, can enable greater public safety use, including for 5G, and has the potential to free up new opportunities for expanded use in the band in the near term.⁸⁴ In addition, after review of the record, we also find that public safety entities would be better served by clarifying the Band Manager's primary responsibilities and revise section 90.1217 of our rules accordingly.

A. Nationwide Overlay License

21. In the *Eighth* and *Ninth Further Notices* the Commission sought comment on the best ways to increase utilization in areas where there are no operations in the band while also preserving the public safety nature of the band and incumbent licensee use.⁸⁵ In particular, in the *Eighth Further Notice* the Commission sought comment on establishing a national license for the band and on what spectrum rights would be associated with the license.⁸⁶ The Commission also asked questions relating to the establishment of an overlay license, such as how a licensing framework could be combined with different access models, and how an overlay license could work with future public safety operations in the band.⁸⁷ The Commission then sought general comment on how to address future licensing of the band, given the decision in the *Seventh Report and Order* to establish a Band Manager and taking into consideration the variety of different implementation issues on which comment was sought in the *Ninth Further Notice*.⁸⁸

⁸³ *Seventh Report and Order*, 38 FCC Rcd at 711–23, paras. 18–49.

⁸⁴ *Eighth Further Notice*, 36 FCC Rcd at 15050–51, paras. 51–53.

⁸⁵ *Id.* at 15042–62, paras. 27–89; *Ninth Further Notice*, 38 FCC Rcd at 737–43, 748–49, paras. 93–123, 148–51.

⁸⁶ *Eighth Further Notice*, 36 FCC Rcd at 15050–51, paras. 51–53; *see also id.* at 15050, para. 53 (“If we were to adopt this approach, what rights and responsibilities over the band should be associated with the national license, and what rights should be reserved for state, local, tribal, or regional public safety licensees? As proposed above, we envision that incumbent licensees in the band would retain spectrum rights and would be entitled to protection of their facilities. Would all other spectrum rights be invested in the national licensee? If yes, what obligation should the national licensee have to ensure access to the band by sub-national public safety entities?”).

⁸⁷ *Id.* at 15059, paras. 81–83; *see also id.* at 15059, para. 83 (asking “[w]hat types of entities should be eligible for overlay licenses” and whether there are “any other considerations regarding the use of overlay licensing for the 4.9 GHz band”).

⁸⁸ *Ninth Further Notice*, 38 FCC Rcd at 748–49, paras. 148–51.

After review of the record, we conclude that the best mechanism for putting unassigned spectrum to use as quickly and efficiently as possible is to assign a nationwide overlay license to the Band Manager, once the selection committee makes its recommendation and that recommendation is confirmed by the Commission, pursuant to the public safety radio services exemption in section 309(j) of the Communications Act.⁸⁹ As further discussed below, the Band Manager will also be authorized to enter into a spectrum sharing agreement with FirstNet to allow FirstNet to operate in unassigned portions of the band. Pursuant to any sharing agreement executed with FirstNet, the Band Manager will be responsible for ensuring that FirstNet's operations are coordinated with, and do not cause harmful interference to, existing public safety operations in the band.

22. PSSA suggests that assigning a nationwide overlay license to the Band Manager could “increase the band’s usage,” “preserv[e] incumbent operations,” “maximize the benefit of the band for the greatest number of America’s first responders,” and “meet public safety’s growing need for advanced and dedicated 5G-enabled communications.”⁹⁰ Similarly, the National Fraternal Order of Police, IAFF, and IACP state that the most efficient and cost-effective way to achieve the goal of ensuring that incumbent licensees are protected and expeditiously deploying 5G services in the band is to utilize an approach like the one proposed by PSSA.⁹¹ Other commenters, including BART, EWA, and WISPA, have historically opposed the creation of a nationwide overlay license, due in part to a concern that a nationwide licensee would force the incumbents out of the band.⁹² Based on our review of this record, we are persuaded that

⁸⁹ 47 U.S.C. § 309(j)(2)(A) (“The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.”).

⁹⁰ PSSA Apr. 23, 2024, *Ex Parte*; PSSA May 24, 2024, *Ex Parte* at 2 (stating its proposal “offers the chance to dramatically increase utilization of and lower costs for the band in a manner that is well-grounded in existing statutory authority”); *see also* AT&T Jun. 20, 2024, *Ex Parte* at 1–4 (explaining that allowing FirstNet to access the band “to support 5G services will allow [FirstNet] to further improve network speed and capacity for the benefit of the public safety community”); NREMT May 30, 2024, *Ex Parte* at 1–2 (“Consistent with the Commission’s goals in this proceeding, the PSSA’s sharing proposal ‘will optimize public safety use and enable the integration of the latest commercially available technologies’”); FirstNet Apr. 8, 2024, *Ex Parte* at 1 (stating that FirstNet “is in a position to leverage the 4.9 GHz band for the benefit of public safety by using it to provide enhanced and innovative broadband communications services and capabilities to first responders on a nationwide basis”); Former Presidents of APCO Apr. 5, 2024, *Ex Parte* (“Inclusion of this spectrum into the existing FirstNet network would make it available to public safety users without bearing the cost of deployment and operations”); Letter from Patrick Yoes, National President, National Fraternal Order of Police, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 2–3 (filed Feb. 13, 2024) (Fraternal Order of Police Feb. 13, 2024, *Ex Parte*) (“Speaking for our officers who use this technology, I can tell you that we have a real need for a dedicated 5G spectrum, and the 4.9 GHz band is uniquely positioned to meet this need both today and into the future.”). *See generally* CWA Aug. 1, 2024, *Ex Parte* at 1–2 (“Allocating the 4.9 GHz band to a single nationwide licensee rather than multiple commercial users would facilitate rapid and efficient nationwide deployment and stop the slow and fragmented approach that has led to prolonged underutilization of the band in the last 20 years.”).

⁹¹ Fraternal Order of Police, et al., Apr. 26, 2024, *Ex Parte*; AT&T Jun. 20, 2024, *Ex Parte* at 1–4; NREMT May 30, 2024, *Ex Parte* at 1–2; City of Stamford May 6, 2024, *Ex Parte* at 1.

⁹² *See, e.g.*, EWA Nov. 29, 2021, Comments at 11; Maryland Apr. 13, 2023, Comments at 5; BART May 15, 2023, Reply at 3 (“No new licenses, should be used to interfere with current or proposed public safety uses, especially and including a proposed “overlay” nationwide license, or in the worst case scenario, drive any public safety users out of a band that was allocated to help meet essential public safety communications needs.”); EWA Jan. 11, 2022, Reply at 3; iCERT May 11, 2023, Reply at 7; Maryland, et al., Jan. 11, 2022, Reply at 6 (citing EWA Nov. 29, 2021, Comments at 11 and NSA Dec. 3, 2021, Reply at 1); NSA Dec. 3, 2021, Reply at 1; Verizon Jan. 11, 2022, Reply at 3–5; WISPA May 15, 2023, Reply at 10; Major Cities May 15, 2023, Reply at 1; Maryland DoIT May 15, 2023, Reply at 4–5; MTA May 15, 2023, Reply at 6–7.

expanding the Band Manager's role and responsibilities to encompass a nationwide overlay license and a sharing agreement with FirstNet for any unassigned spectrum is the best approach to ensure that 4.9 GHz band spectrum is more fully utilized in the near term, while at the same time protecting existing incumbent licensee usage.⁹³

23. The Band Manager, once it has applied for and receives an overlay license, will obtain the rights to a nationwide geographic area license across the entire 50 megahertz of the band that is "overlaid" on top of the existing incumbent licenses and includes areas where spectrum is unassigned.⁹⁴ We find that this licensing structure, combined with authorizing the Band Manager to enter into a sharing agreement enabling FirstNet to operate where white spaces exist, is the best mechanism for increasing public safety operations in this band in the near term.⁹⁵ This is akin to the framework that the Commission adopted in the *700 MHz Second Report and Order* in that the 4.9 GHz Band Manager will be prohibited from using the overlay license to provide its own services.⁹⁶ We believe that this approach will quickly allow for a wider variety of public safety uses in a more dynamic fashion than is currently

⁹³ See, e.g., Letter from Patrick Yoes, National President, Fraternal Order of Police, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Apr. 26, 2024) (Fraternal Order of Police, et al., Apr. 26, 2024, *Ex Parte*); Former Presidents of APCO Apr. 5, 2024, *Ex Parte*; Letter from Steven Alonzo, Manager, Government Relations and Policy, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 21, 2024); Letter from Steven Alonzo, Manager, Government Relations and Policy, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 18, 2024) (IAFC Mar. 18, 2024, *Ex Parte*); Letter from Doug Chapman, Senior Vice President, Etherstack, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 18, 2024); Letter from Edward A. Kelly, General President, International Association of Fire Fighters, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Feb. 16, 2024) (IAFF Feb. 16, 2024, *Ex Parte*) ("it is imperative for the FCC to integrate the 4.9 GHz band into the Nationwide Public Safety Broadband Network (FirstNet)"). See generally APCO Apr. 13, 2023, Comments at 10–11 ("The band manager should explore a variety of opportunities to leverage excess spectrum and facilitate innovation in the band, including leasing spectrum to operators of broadband networks, so long as public safety licensees are fully protected."); IAFC Apr. 13, 2023, Comments at 2 ("In order to ensure integrated data flows on the incident scene, data and other communications on both the FirstNet network and the 4.9 GHz band should be integrated to present a clear picture of the incident and the responding resources and personnel to the incident commander."); PSSA Apr. 12, 2023, Comments at 16 ("This will also ensure that priority and ruthless preemption for all public safety traffic, irrespective of which band is used, will operate consistently, seamlessly guaranteeing public safety communications are always protected from harmful interference."); FirstNet Apr. 13, 2023, Comments at 2–3; Corning May 15, 2023, Reply at 4 ("Integration of the 4.9 GHz band with the NPSBN must be seamless and automatic to provide end users with wireless communications free of delays which is paramount to the efficient and effective operation of public safety services."); KSA May 22, 2023, Reply at 1; American Ass'n of State Troopers May 18, 2023, Reply at 1; Nextivity May 15, 2023, Reply at 1 ("This will facilitate the availability of 5G and other advanced broadband communications and services, and ensure full interoperability of all public safety broadband communications nationwide, avoiding piecemeal, parallel networks.").

⁹⁴ The nationwide overlay license will include all unassigned spectrum subject to the exclusion of licensed geographic areas and frequencies held by an incumbent licensee eligible under section 90.1203(a) of the Commission's rules.

⁹⁵ See, e.g., Former Presidents of APCO Apr. 5, 2024, *Ex Parte* ("Inclusion of this spectrum into the existing FirstNet network would make it available to public safety users without bearing the cost of deployment and operations."); IAFF Feb. 16, 2024, *Ex Parte* ("If the 4.9 GHz band is integrated into the FirstNet network however, public safety providers including fire service professionals, will be in charge of guiding and directing the operation and evolution of this technology and capability.").

⁹⁶ In the 700 MHz band, the Commission required the Guard Band Manager to act solely as a "spectrum broker" and "prohibited them from using spectrum for their own private internal communications or to provide telecommunications services" *Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5311–23, paras. 25–51 (2000) (*700 MHz Second Report and Order*).

permitted in the band, which in turn will make this spectrum more responsive to market demands and technological innovations.⁹⁷

24. The Band Manager will also carry with it important responsibilities in conjunction with its overlay licensee role, paramount among them being the obligation to oversee use of the spectrum pursuant to the sharing agreement to ensure that FirstNet's operations on these frequencies do not interfere with incumbent operations. The Band Manager will be authorized to enable FirstNet to operate anywhere within the geographic area of the overlay license, subject to the parameters of the sharing agreement and protection of incumbent licensees.⁹⁸ If an incumbent licensee cancels or terminates its license, the Band Manager will be authorized to amend its sharing agreement with FirstNet, if necessary, to include the rights to operate in the geographic (or site-based) area and on the channel(s) of the cancelled license.⁹⁹ For these reasons, we believe that this mechanism is the best method to make certain that the 4.9 GHz band remains a public safety band which is more fully utilized, including by existing incumbent licensees. The Band Manager will ensure that incumbent licensees can continue their existing operations to suit their unique spectrum needs while simultaneously and separately authorizing FirstNet's operations in areas of the band where there are no incumbent operations.¹⁰⁰ We clarify that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to allow it to operate within the service areas of incumbent licensees consistent with section 90.1203(b) of the Commission's rules.¹⁰¹

25. We also conclude that the future issuance of the Band Manager overlay license is consistent with our statutory authority under section 309(j) of the Communications Act.¹⁰² While section

⁹⁷ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, et al.*, WT Docket No. 99-87, et al., Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22709, 22729, para. 40 (2000) (*Section 309(j) Report and Order*).

⁹⁸ *See generally Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 36 FCC Rcd 5446, 5473, para. 77 (2019) (implementing the rules for the Educational Broadband Service (EBS) overlay licenses).

⁹⁹ *Transforming the 2.5 GHz Band*, 36 FCC Rcd at 5473, para. 77, n.211 (citing *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 1469, para. 3 (1995) (giving EA licensees the right to use any spectrum within the EA block that is recovered by the Commission from an incumbent SMR licensee in the event of termination of the incumbent's license)).

¹⁰⁰ We emphasize that the intent of our decision today is to allow the Band Manager to apply for a license for unassigned spectrum in the band and to coordinate any operations by FirstNet pursuant to a sharing agreement to ensure the protection of incumbent operations. It does not otherwise confer authority on the Band Manager or FirstNet to modify or alter the existing license rights of incumbents.

¹⁰¹ Under our current rules, 4.9 GHz licensees are permitted to enter into sharing arrangements for the use of spectrum with entities that do not meet the eligibility requirements for a license, and those entities must use the spectrum in support of public safety. 47 CFR § 90.1203(b). These 4.9 GHz band sharing arrangements entered into by incumbent licensees will continue to be limited to supporting public safety operations and now will be subject to coordination by the Band Manager.

¹⁰² 47 U.S.C. § 309(j)(2)(A). The Commission has established that Band Manager licensing is consistent with our statutory authority. *See Section 309(j) Report and Order*, 15 FCC Rcd at 22730, para. 42 (citing *700 MHz Second Report and Order*, 15 FCC Rcd at 5319–21, paras. 42–47) (“We previously concluded in the 700 MHz guard band proceeding that band manager licensing is fully consistent with our statutory spectrum management obligations”); *id.* (citing 47 U.S.C. § 309(a) (Commission authority to grant applications found to serve the public interest, convenience, and necessity)) (“because band managers are to be licensed and regulated by the Commission, the Commission fulfills its statutory obligation under Section 309(a) to determine whether licensing of spectrum will serve the public interest, convenience, and necessity.”).

309(j) generally requires that the Commission assign initial licenses through use of competitive bidding when mutually exclusive applications for such licenses are accepted for filing,¹⁰³ an exception exists pursuant to section 309(j)(2)(A) of the Communications Act for public safety radio services.¹⁰⁴ This exemption applies to radio services, rather than specific users, that the Commission specifically designates for the particular uses that Congress intended to benefit—services intended to protect the safety of life, health, or property.¹⁰⁵ The Commission has determined that where the majority of users licensed in an existing service and within a given frequency band are qualified to obtain auction-exempt spectrum, future licensing for that service in that band will be exempt from auction unless the spectrum is being used for new services.¹⁰⁶

26. We find that this exemption applies to the 4.9 GHz band because the Commission specifically designated this band for services intended to protect the safety of life, health, or property.¹⁰⁷ In the *Third Report and Order*, the Commission concluded that eligibility for entrance into and operations in the 4.9 GHz band are primarily limited to the provision of public safety services as defined in section 90.523 of the Commission’s rules.¹⁰⁸ We find that because a majority of users licensed in the 4.9 GHz

¹⁰³ 47 U.S.C. § 309(j)(1), (2).

¹⁰⁴ *Id.* § 309(j)(2)(A) (“The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public . . .”).

¹⁰⁵ *Id.*; *Section 309(j) Report and Order*, 15 FCC Rcd at 22740–52, paras. 63–88; *see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended*, WT Docket No. 99-87, Memorandum Opinion and Order, 17 FCC Rcd 8359, 8367–75, paras. 19–38 (2002) (*Section 309(j) MO&O*); *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended*, WT Docket No. 99-87, Erratum (2002). The Commission also concluded that a radio service not allocated for traditional public safety uses will be deemed to be used to protect the safety of life, health or property within the meaning of section 309(j)(2)(A)(i) if the dominant use of the service is by entities that: (1) have an infrastructure that they use primarily for the purpose of providing essential public services to the public at large; and (2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the public at large. *See Section 309(j) Report and Order*, 15 FCC Rcd at 22746–48, paras. 76–78.

¹⁰⁶ *Section 309(j) MO&O*, 17 FCC Rcd at 8367–68, para. 20 n.59 (“This ‘dominant use’ test applies only when we are considering licensing additional applicants in an existing service in the same frequency band” and “[i]t does not apply to new services . . .”); *see also id.* at 8375, para. 38.

¹⁰⁷ Pursuant to this exception, the Commission will expect the selection committee to identify the Band Manager selectee based on certain qualifications and parameters that will be set forth by the Bureaus in a public notice, as discussed below and in the *Seventh Report and Order*. Because our intent is for the Band Manager to be assigned a Commission license, we emphasize that the Bureaus will confirm via order that the Band Manager selectee meets the Bureaus’ established selection criteria, and delegate authority to the Bureaus to perform these duties. Once the Bureaus have confirmed the Band Manager selectee meets the relevant selection criteria, only then will the selectee be allowed to apply for the 4.9 GHz nationwide overlay license pursuant to procedures to be established by the Bureaus as part of their delegated authority. We believe that this selection process will be more efficient and effective in ensuring that the entity that applies for the license is the most qualified. *See Section 309(j) Report and Order*, 15 FCC Rcd at 22713–14, para. 11; *see also Rainbow Broadcasting v. FCC*, 949 F.2d 405 (D.C. Cir. 1991) (the Commission is not required to open all frequencies for competing applications, as long as it provides a reasoned explanation of its decision not to do so).

¹⁰⁸ *4.9 GHz Third Report and Order*, 18 FCC Rcd at 9158–63, paras. 15–25; *see also* 47 CFR § 90.523; *id.* § 90.1203(a) (“Entities providing public safety services (as defined in § 90.523) are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band. All of the requirements and conditions set forth in § 90.523 also govern authorizations in the 4940–4990 MHz band.”), (b) (“4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility

(continued....)

band are qualified to obtain auction-exempt spectrum, assigning a nationwide overlay license to the Band Manager is also exempt from auction.¹⁰⁹ As explained *infra*, the primary use of the band—protecting the safety of life, health, or property—will not change by assigning an overlay license to the Band Manager and authorizing it to enter into a sharing agreement with FirstNet. We also note that, even if the issuance of an overlay license could be seen as a new service, we believe that this service still meets the requirements of section 309(j)(2)(A) of the Act.¹¹⁰ The overlay license will enable FirstNet’s public safety operations¹¹¹ in unassigned spectrum in the band, which will aid in expanding the provision of an important public service and further advance FirstNet’s mission by making its service more reliable and putting available spectrum to use in order to prevent and/or respond to a disaster or crisis affecting the public.¹¹² Thus, we find that it is appropriate and in the public interest to apply the public safety radio services exemption to this band to assign a nationwide overlay license to the 4.9 GHz Band Manager, once it is selected and has successfully applied for such a license.

B. Spectrum Sharing Agreement with FirstNet

27. In conjunction with issuance of a nationwide overlay license to the Band Manager, once selected, the Band Manager will be authorized to enter into a sharing agreement with FirstNet for use of the unassigned 4.9 GHz band spectrum that will be covered by the Band Manager’s license. Recognizing that FirstNet is an independent authority within the NTIA,¹¹³ we anticipate that section 2.103(b) of the Commission’s rules provides sufficient authority to enable any federal stations used by FirstNet to access the 4.9 GHz band pursuant to its sharing agreement with the Band Manager.¹¹⁴ As discussed *supra*, we believe that this sharing model combined with the Band Manager overlay license is the best way to preserve the public safety nature of the 4.9 GHz band, promote robust deployment in the band in the near term, and facilitate the development and deployment of new technologies and services for the public safety community.

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requirements in this section. However, all applications in the band are limited to operations in support of public safety.”).

¹⁰⁹ Section 309(j) MO&O, 17 FCC Rcd at 8367–68, para. 20.

¹¹⁰ See *supra* note 104.

¹¹¹ FirstNet Apr. 13, 2023, Comments at 2 (“as we look to further advance and evolve the network to continuously meet the operational needs of first responders and other public safety personnel across the country, the FirstNet Authority sees the 4.9 GHz spectrum as a potential avenue to provide enhanced broadband communications services, features, and capabilities—including 5G services—for public safety”).

¹¹² *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended*, WT Docket No. 99-87, Second Memorandum Opinion and Order, 18 FCC Rcd 8519, 8920, para. 3 (2003) (*Section 309(j) Second MO&O*) (citing *Section 309(j) Report and Order*, 15 FCC Rcd at 22746, paras. 76–78) (“the Commission concluded that a radio service not allocated for traditional public safety uses will be deemed to be used to protect the safety of life, health or property within the meaning of Section 309(j)(2)(A)(i) if the dominant use of the service is by entities that (1) have an infrastructure that they use primarily for the purpose of providing essential public services to the public at large; and (2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the public at large.”); *Section 309(j) MO&O*, 17 FCC Rcd at 8367–75, paras. 19–38.; see also FirstNet Apr. 8, 2024, *Ex Parte* at 2 (“FirstNet Authority is in a position to leverage the 4.9 GHz band for the benefit of public safety by using it to provide enhanced and innovative broadband communications services and capabilities to first responders on a nationwide basis”); AT&T Jun. 20, 2024, *Ex Parte* at 1–3 (“permitting the FNA access to 4.9 GHz mid-band spectrum, as the PSSA and other leading public safety associations have proposed, will allow the FNA to upgrade and improve the NPSBN so that first responders can harness the life-saving capabilities of 5G”).

¹¹³ See 47 U.S.C. § 1424(a) (“There is established as an independent authority within the NTIA the ‘First Responder Network Authority’ or ‘FirstNet’”).

¹¹⁴ 47 CFR § 2.103(b).

28. In the *Ninth Further Notice*, the Commission noted PSSA’s original proposal that the nationwide Band Manager should evaluate “potential integration” of the 4.9 GHz band “with the Nationwide Public Safety Broadband Network” and sought broad comment on exploring ways in which the band might be used in conjunction with broadband networks used by public safety.¹¹⁵ The Commission specifically noted that it previously sought comment in 2012 on how the 4.9 GHz band could complement the 700 MHz public safety broadband network, and that since that time, a number of commercial networks have integrated public safety operations into their broadband networks.¹¹⁶ The Commission then tentatively concluded that the Band Manager should explore opportunities to lease spectrum to operators of broadband networks used by public safety in other frequency bands.¹¹⁷ In addition, the Commission generally asked whether there is existing statutory authority that would permit the integration of the 4.9 GHz band into public safety broadband networks.¹¹⁸

29. In response, many stakeholders expressed support for enabling access to the 4.9 GHz band by FirstNet’s NPSBN in one form or another, with proposals ranging from direct licensed access by FirstNet, to other more indirect means such as PSSA’s recent Band Manager proposal detailed *supra*.¹¹⁹ Corning expresses its support for FirstNet’s use of the Band and advocates that any such access “must be seamless and automatic to provide end users with wireless communications free of delays which is paramount to the efficient and effective operation of public safety services.”¹²⁰ Similarly, the National

¹¹⁵ *Ninth Further Notice*, 38 FCC Rcd at 736, paras. 87–88; *see also* PSSA Nov. 29, 2021, Comments at 9.

¹¹⁶ *Ninth Further Notice*, 38 FCC Rcd at 736, para. 87; *Amendment of Part 90 of the Commission’s Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WP Docket No. 07-100, WP Docket No. 06-229, WT Docket No. 06-150, Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking, 27 FCC Rcd 6577, 6594–95, para. 47 (2012); *see also, e.g.*, T-Mobile, *T-Mobile for Government*, <https://www.t-mobile.com/business/government/public-safety> (last visited Oct. 7, 2024); Press Release, T-Mobile Introduces ‘T-Priority’ Featuring the World’s First Network Slice for First Responders, T-Mobile (Sept. 18, 2024), <https://www.t-mobile.com/news/business/t-priority-network-slice-for-first-responders>; Verizon, *Verizon Frontline*, <https://www.verizon.com/business/solutions/public-sector/public-safety/> (last visited Oct. 7, 2024).

¹¹⁷ *Ninth Further Notice*, 38 FCC Rcd at 736, paras. 87–88.

¹¹⁸ *Id.* at 736, paras. 87–88.

¹¹⁹ *See, e.g.*, APCO Apr. 13, 2023, Comments at 10–11 (stating that the Band Manager should explore a variety of opportunities to leverage excess spectrum and facilitate innovation in the band, including leasing spectrum to operators of broadband networks, so long as public safety licensees are fully protected); IAFC Apr. 13, 2023, Comments at 2 (“In order to ensure integrated data flows on the incident scene, data and other communications on both the FirstNet network and the 4.9 GHz band should be integrated to present a clear picture of the incident and the responding resources and personnel to the incident commander.”); FirstNet Apr. 13, 2023, Comments at 2–3; PSSA Apr. 12, 2023, Comments at 16 (“This will also ensure that priority and ruthless preemption for all public safety traffic, irrespective of which band is used, will operate consistently, seamlessly guaranteeing public safety communications are always protected from harmful interference.”); American Ass’n of State Troopers May 18, 2023, Reply at 1; Corning May 15, 2023, Reply at 4; KSA May 22, 2023, Reply at 1; IAFC Apr. 11, 2024, *Ex Parte*; Nextivity May 15, 2023, Reply at 1 (“This will facilitate the availability of 5G and other advanced broadband communications and services, and ensure full interoperability of all public safety broadband communications nationwide, avoiding piecemeal, parallel networks.”); FirstNet Apr. 8, 2024, *Ex Parte*; Former Presidents of APCO International Apr. 5, 2024, *Ex Parte*; Letter from Mark Heine, President, California Fire Chiefs Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 27, 2024) (CalChiefs Mar. 27, 2024, *Ex Parte*); Letter from Brad Hardin, President, Southwestern Division of the International Association of Fire Chiefs Southwestern Fire Chiefs Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Feb. 22, 2024) (SWD Feb. 22, 2024, *Ex Parte*); IAFF Feb. 16, 2024, *Ex Parte*; IACP Feb. 14, 2024, *Ex Parte*; Letter from Leslie S. Barnes, Senior Director, Government Affairs, Qualcomm, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 30, 2023); PSSA Apr. 23, 2024, *Ex Parte* at 2–4; Fraternal Order of Police Feb. 13, 2024, *Ex Parte*.

¹²⁰ Corning May 15, 2023, Reply at 4.

Fraternal Order of the Police states that the “4.9 GHz band is very much underutilized nationwide” and “making the 4.9 GHz spectrum available for nationwide FirstNet 5G deployment is the most expedient and impactful way we can operationalize” the spectrum.¹²¹

30. Other stakeholders oppose use of the band by FirstNet, arguing that the band should remain separate from, and in any case a license should not be directly assigned to, FirstNet.¹²² In a related vein, T-Mobile raises concerns that “the Commission should not allow a single entity that represents only one contemplated use of the band, such as FirstNet, to become the Band Manager.”¹²³ Some commenters argue that FirstNet is not statutorily authorized to hold a 4.9 GHz license.¹²⁴ While we address our authority to assign a license to the Band Manager pursuant to section 309(j)(2)(A) of the Communications Act above, we need not address stakeholders’ concerns as they specifically pertain to FirstNet’s statutory authority to hold a nationwide overlay license, as we are not directly assigning a nationwide license to FirstNet through our decision today. Notwithstanding this distinction, CERC I also argues that even if the Band Manager, rather than FirstNet, holds a nationwide overlay license for the 4.9 GHz band, the Commission lacks authority to grant FirstNet indirect access to the band through a sharing agreement with the Band Manager.¹²⁵ Specifically, CERC I claims that FirstNet’s statutory authority is limited to operation in the 700 MHz band “to the exclusion of all other bands.”¹²⁶ Several commenters—and FirstNet—disagree. PSSA notes that while the Spectrum Act directed the Commission to issue a license

¹²¹ Fraternal Order of Police Feb. 13, 2024, *Ex Parte* at 1–3.

¹²² See, e.g., AASHTO Apr. 10, 2023, Comments at 4–5; BART Mar. 30, 2023, Comments at 11; Maryland Apr. 13, 2023, Comments at 4–5; BART May 15, 2023, Reply at 2; William Bratton et al., May 15, 2023, Reply at 3–6, 7–8; iCert May 11, 2023, Reply at 5, 7; Maryland DoIT May 15, 2023, Reply at 4–5; NSA May 15, 2023, Reply at 1–2; T-Mobile May 15, 2023, Reply at 2, 10–15; Verizon May 15, 2023, Reply at 11–15; Comments from William “Clint” McDonald, Executive Director, Southwest Border Sheriffs’ Coalition, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Apr. 26, 2024); CERC I Apr. 15, 2024, *Ex Parte*; Letter from Julian Gehman, American Association of State Highway and Transportation Officials, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jan. 24, 2024) (AASHTO Jan. 24, 2024, *Ex Parte*); Letter from Laura Cooper, Executive Director, Major Cities Chiefs Association, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Dec. 20, 2023); Coalition Jul. 21, 2023, *Ex Parte*; Letter from Greg Kunkle, Counsel to Metropolitan Transportation Authority, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jun. 30, 2023); Letter from Budge Currier, Assistant Director, California Office of Emergency Services, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Jan. 16, 2024).

¹²³ T-Mobile May 15, 2023, Reply at 2 (“That is especially true when an entity – like FirstNet – would potentially take a national approach to managing the band, frustrating the needs of the broader community of public safety users, which remain local.”).

¹²⁴ See, e.g., CERC I May 10, 2024, *Ex Parte* (“[N]either the [Spectrum] Act nor any other statute authorizes the Commission to assign a nationwide license of the 4.9 GHz band to [FirstNet].”); CERC I Apr. 15, 2024, *Ex Parte*; CERC I Jun. 3, 2024, *Ex Parte* at 4; CERC I Jul. 10, 2024, *Ex Parte* at 4. But see FirstNet Apr. 13, 2023, Comments at 1–3 (“The FirstNet Authority believes it would have the authority under the [Spectrum] Act to access and use the 4.9 GHz band spectrum for the NPSBN given the band is designated as public safety”); FirstNet Apr. 8, 2024, *Ex Parte* (“the FirstNet Authority is in a position to leverage the 4.9 GHz band for the benefit of public safety by using it to provide enhanced and innovative broadband communications services and capabilities to first responders on a nationwide basis”); PSSA May 24, 2024, *Ex Parte* at 2–6 (stating that “[t]he [Spectrum] Act further directs the establishment of a “nationwide interoperable public safety broadband network”—and, in defining the term “nationwide public safety broadband network,” does not limit the “network” to the particular spectrum required to be licensed to the FirstNet Authority” and noting that the Spectrum Act “makes clear that the FirstNet Authority is not limited to spectrum subject to the mandatory license” and “authorizes the Commission to ‘take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities under this subchapter.’”); AT&T Jun. 20, 2024, *Ex Parte* at 6–7.

¹²⁵ See CERC I May 10, 2024, *Ex Parte*.

¹²⁶ *Id.* at 2.

for the 700 MHz band to FirstNet, nothing in the statutory language limits the operation of FirstNet's NPSBN to that band.¹²⁷ AT&T argues that, in fact, the text of the Spectrum Act demonstrates Congress' expectation that FirstNet's NPSBN would keep pace with technological advancements to ensure that first responders would be able to benefit from innovations in communications services and technologies.¹²⁸

31. In its comments to the *Ninth Further Notice*, FirstNet stated that it is authorized to use the 4.9 GHz band pursuant to the Spectrum Act.¹²⁹ FirstNet reasoned that pursuant to section 1422(b) of the Spectrum Act, Congress provided flexibility for the growth of FirstNet's NPSBN, providing that the network should "initially" consist of a core network that "provides connectivity between . . . the radio access network; and . . . the public Internet or the public switched network, or both" and that it should "evolve with technological advancements."¹³⁰ In addition, the Spectrum Act gives the Commission broad

¹²⁷ PSSA May 24, 2024, *Ex Parte* at 5 ("in defining the term "nationwide public safety broadband network," [the Spectrum Act] does not limit the "network" to the particular spectrum required to be licensed to the FirstNet Authority"); *see also* AT&T Jun. 20, 2024, *Ex Parte* at 6 (citing CERCJ Jun. 6, 2024, *Ex Parte* at 3) ("The fact that the Spectrum Act includes 'multiple references to the 700 MHz band and its corresponding license' does not mean that [FirstNet] can only ever use the 700 MHz band . . . Rather, it simply reflects the reality that Congress directed the FCC to grant [FirstNet] a license for Band 14 to start 'development' of its NPSBN."). FirstNet has stated that it is already operating outside the 700 MHz band on the commercial spectrum licensed to its partner, AT&T. *FirstNet Renewal Order*, 39 FCC Rcd at 4994–95, para. 14 ("FirstNet's contract with AT&T has provided public safety NPSBN users with access to AT&T's LTE network while buildout of the Band 14 network continues."); *see also* GAO, Public-Safety Broadband Network: Congressional Action Required to Ensure Network Continuity, GAO 22-104915 at 11 (Feb. 2022 GAO Report) ("According to FirstNet officials, FirstNet currently has negotiated access to AT&T's 5G-capable licensed commercial spectrum to begin 5G services on [FirstNet's NPSBN]."); *An Update on FirstNet: Hearing Before the Subcommittee on Communications, Technology, Innovation, and the Internet*, S. Hrg. 115-479, at 35 (Jul. 20, 2017) (discussing plans to allow FirstNet to operate on all of AT&T's licensed spectrum to "see the benefits of FirstNet on all spectrum bands"); *id.* at 51 ("Public safety has been told for many years that the magic of FirstNet happens on Band Class 14, and that's . . . not correct anymore . . . The magic happens on the AT&T network . . . [W]e've extended it far beyond the Band Class 14 to our entire network."); NSA Jun. 28, 2024, *Ex Parte* at 5 (stating FirstNet's "users have access to all AT&T's bands").

¹²⁸ AT&T Jun. 20, 2024 *Ex Parte* at 7; NREMT May 30, 2024, *Ex Parte* at 2 ("Congress . . . expressly contemplated that the NPSBN would receive upgrades as technology and spectrum resources evolved over time"); *see also* CWA Aug. 1, 2024, *Ex Parte* at 2 ("Congress intended [FirstNet] to maintain, upgrade, and improve its network. The 4.9 GHz spectrum does precisely that by providing the needed mid-band spectrum to successfully position FirstNet as a 5G and 6G communications services provider while protecting the operations of incumbent licensees under sharing arrangements.").

¹²⁹ FirstNet Apr. 13, 2023, Comments at 2, n.9 ("The FirstNet Authority believes it would have the authority under the Spectrum Act to access and use the 4.9 GHz band spectrum for the NPSBN given the band is designated as public safety spectrum.").

¹³⁰ 47 U.S.C. § 1422(b); *see also First Responder Network Authority; Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, Notice, 80 FR 63523-01, 63526 (FirstNet/DOC/NTIA 2015) ("FirstNet stated that its "interpretations of both the core network and RAN are inclusive of the language of 47 U.S.C. § 1422(b) that specifically states the national architecture must 'evolve[] with technological advancements and initially consists of' the stated core network and RAN components. The use of the term 'initially' and the phrase 'evolve with technological advancements' in 47 U.S.C. § 1422(b) indicate that Congress understood that the definitions of the core network and RAN could not be static. Rather, the definitions of such terms would need to be modified throughout the life of the network in order to help ensure that public safety would have a network capable of supporting and providing access to new and evolving technologies."). The Spectrum Act also requires FirstNet to "ensure the maintenance, operation and improvement" of its NPSBN, "including by ensuring that [FirstNet] updates and revises any policies . . . to take into account new and evolving technologies" and to reinvest funds received from fees "by using such funds only for constructing, maintaining, operating or improving" the network. 47 U.S.C. §§ 1426(c)(4), 1428(d). *But see* CERCJ Jul. 10, 2024, *Ex Parte* at 6–7 (arguing that that these provisions of the Spectrum Act "cannot be read to authorize an expansion of [FirstNet's] NPSBN beyond the bounds described in the Act").

discretion to assist FirstNet in furtherance of its statutory mandate.¹³¹ Upon review of FirstNet’s analysis of its authorizing statute, rather than reading a restriction on FirstNet’s authority to operate in bands other than the 700 MHz band, we concur that one of the Spectrum Act’s goals is to ensure that FirstNet’s NPSBN advances and evolves and that restricting FirstNet’s NPSBN to the 700 MHz band would not be in line with this goal. Accordingly, we reject the argument that the Commission lacks authority to allow FirstNet to indirectly access the 4.9 GHz band through a sharing agreement.¹³²

32. CERC I further suggests that FirstNet’s structure raises constitutional questions that would render it “unwise” for the Commission to grant it authority to operate in the 4.9 GHz band.¹³³ Even assuming *arguendo* that it is appropriate for the Commission to opine on such matters with respect to an entity housed within another agency,¹³⁴ we disagree. CERC I first argues that FirstNet’s self-funding mechanism may violate the Appropriations Clause based on the “same logic” that resulted in the Fifth Circuit’s holding that the Consumer Financial Protection Bureau’s (CFPB) funding mechanism violated the Appropriations Clause.¹³⁵ The Supreme Court, however, recently reversed the Fifth Circuit’s decision and upheld the CFPB’s funding mechanism.¹³⁶ We thus find that CERC I’s first argument regarding FirstNet’s constitutionality lacks merit.

33. CERC I also claims that the structure of FirstNet’s Board violates the Appointments Clause because the Board’s members are “Officers of the United States” and are not meaningfully supervised by a presidential appointee confirmed by the Senate.¹³⁷ NREMT and AT&T disagree, arguing that the Board’s members lack the kind of “significant authority” needed to be considered officers because their decisions cannot bind others.¹³⁸ Moreover, they argue that even if FirstNet’s board members were officers they would be inferior officers because they are subject to supervision by NTIA and the Secretary of Commerce.¹³⁹ As an initial matter, we agree with NREMT and AT&T as we do not believe FirstNet’s Board members would be considered principal officers of the United States under the Appointments Clause. As AT&T notes, FirstNet is an independent authority housed within NTIA, which itself is an agency within the Department of Commerce.¹⁴⁰ In a recent report, the U.S. Government Accountability Office (GAO) observed that FirstNet “officials and Board members” stated that they were

¹³¹ 47 U.S.C. § 1433 (providing that the Commission “may take any action necessary to assist” FirstNet “in effectuating its duties and responsibilities”).

¹³² In acknowledgement of CERC I’s arguments regarding FirstNet’s statutory authority to expand its spectrum, we emphasize that our decision today merely clarifies that FirstNet may access the 4.9 GHz band via a sharing agreement with the Band Manager and pursuant to section 2.103(b) of the Commission’s rules. *See* CERC I Jul. 10, 2024, *Ex Parte* at 6–7. Any such sharing agreement will be subject to, and must be in accordance with, the regulatory framework of the Spectrum Act.

¹³³ CERC I May 10, 2024, *Ex Parte* at 9.

¹³⁴ If the Commission were to accede to CERC I’s request—to treat FirstNet for purposes of this *Eighth Report and Order* as an entity that is not authorized to exist, let alone hold licenses or lease spectrum—such treatment would also logically require that the Commission disregard its Congressionally mandated responsibilities regarding licensing spectrum to FirstNet.

¹³⁵ CERC I May 10, 2024, *Ex Parte* at 10–11 (citing *Cnty. Fin. Servs. Ass’n of Am., Ltd. v. CFPB*, 51 F.4th 616, 638–39 (5th Cir. 2022)).

¹³⁶ *CFPB v. Cnty. Fin. Servs. Ass’n of Am., Ltd.*, No. 22-448, 2024 WL 2193873 (May 16, 2024).

¹³⁷ CERC I May 10, 2024, *Ex Parte* at 9–10.

¹³⁸ NREMT May 30, 2024, *Ex Parte* at 5–6; AT&T Jun. 20, 2024, *Ex Parte* at 11–13.

¹³⁹ NREMT May 30, 2024, *Ex Parte* at 5–6; AT&T Jun. 20, 2024, *Ex Parte* at 11–13.

¹⁴⁰ *Id.* (contrasting NTIA’s broad mandate to administer the federal use of spectrum with FirstNet’s “single public safety mandate to build, deploy, and operate” the nationwide public safety broadband network using specific spectrum bands).

required to follow NTIA's procedures, limiting their ability to engage in independent decision-making "in operational and planning issues."¹⁴¹ As CERC I acknowledges, courts have found persons to be inferior, rather than principal, officers when they are subject to the supervision of a presidential appointee confirmed by the Senate.¹⁴² Moreover, FirstNet Board members, including its Chair, are subject to removal by the Secretary of Commerce at any time, with or without cause.¹⁴³ Notwithstanding this reasoning, we likewise agree with AT&T that this issue is not relevant to the current proceeding because permitting FirstNet to access the 4.9 GHz band would not affect whether the members of the FirstNet Board should be considered officers of the United States.¹⁴⁴ Absent a judicial finding that FirstNet's structure is unconstitutional or equivalent guidance from Congress, we do not find FirstNet's structure to pose a constitutional impediment.

34. Finally, certain commenters oppose use of the 4.9 GHz band by FirstNet's NPSBN on the basis that FirstNet has not made a showing evidencing a need for additional spectrum.¹⁴⁵ Other

¹⁴¹ Feb. 2022 GAO Report at 17. Board members also reported that it was unclear whether FirstNet's CEO and staff were accountable to the Board or to NTIA.

¹⁴² CERC I May 10, 2024, *Ex Parte* at 9–10; see *Edmond v. United States*, 520 U.S. 651, 662–63 (1997) ("Generally speaking, the term 'inferior officer' connotes a relationship with some higher ranking officer or officers below the President: Whether one is an 'inferior' officer depends on whether he has a superior," with an inferior officer's work "directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate."); cf. *United States v. Arthrex, Inc.*, 594 U.S. 1, 3 (2021) (finding certain administrative patent judges were unlawfully appointed in violation of the Appointments Clause because they could render final decisions without supervision by a politically accountable officer).

¹⁴³ FirstNet Authority Bylaws Section 3.07 (Nov. 2021), <https://firstnet.gov/sites/default/files/Board%20Bylaws%2C%20November%202021.pdf>. Although the Bylaws can be amended by a majority vote of the Board, any modifications that affect the powers of the Secretary of Commerce under the Spectrum Act "shall be approved by the Commerce Secretary or his or her designee." *Id.* at Section 6.01. In *Edmond v. United States*, the Court found that the official in question was an inferior officer because he was subject to removal in addition to lacking power "to render a final decision on behalf of the United States unless permitted to do so by other Executive officers." 520 U.S. at 665; see also *Morrison v. Olsen*, 487 U.S. 654, 671 (1988) (acknowledging that "the line between 'inferior' and 'principal' officers is one that is far from clear," but finding that independent counsel named by a special DOJ court created by statute for such purpose was "clearly" an inferior officer because she was subject to removal by a higher Executive Branch official; was empowered by statute to perform only certain, limited duties; was limited in jurisdiction; and was limited in tenure); *In re Grand Jury Investigation*, 916 F.3d 1047, 1052–53 (D.C. Cir. 2019) (finding that a special counsel was an inferior officer because the Attorney General had plenary authority to revise regulations that protected special counsel from oversight and removal; because special counsel served at the pleasure of an Executive Branch officer, "the control thereby maintained means [he] is an inferior officer").

¹⁴⁴ AT&T Jun. 20, 2024, *Ex Parte* at 12–13.

¹⁴⁵ MCCA et al. Jun. 3, 2024, *Ex Parte* at 2; Verizon Jun. 11, 2024, *Ex Parte* at 2 ("Nothing in the record documents that FirstNet lacks access to sufficient spectrum to meet its statutory role."); NSA Jun. 28, 2024, *Ex Parte* at 5 ("FirstNet clearly does not need more spectrum, given its users have access to all AT&T's bands"); Verizon Jul. 1, 2024, *Ex Parte*; CERC I Jul. 10, 2024, *Ex Parte* at 2–3; Letter from Michael Calabrese, Director, New America's Open Technology Institute, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 5 (filed Jul. 23, 2024) (OTI & PK Jul. 23, 2024, *Ex Parte*); Letter from Michael Calabrese, Director, New America's Open Technology Institute, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Aug. 7, 2024) (OTI & PK Aug. 7, 2024, *Ex Parte*). Commenters citing the Department of Commerce's Inspector General report also stated that FirstNet should "focus on fixing its coverage problem, not expanding its spectrum holdings." See, e.g., MCCA et al. Jun. 3, 2024, *Ex Parte* at 1; CERC I Jun. 25, 2024, *Ex Parte* at 1–4; Inspector General, U.S. Department of Commerce, Final Report No. OIG-24-027-A, FirstNet Authority's Lack of Contract Oversight for Device Connection Targets Puts the NPSBN at Risk of Impacting First Responders' Use of the Network (Jun. 12, 2024) (OIG Report); CERC I Jul. 10, 2024, *Ex Parte* at 12–13; Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 1–2 (filed Aug. 13, 2024). As background, the OIG Report is the result of an audit conducted (continued....)

commenters such as iCERT state that FirstNet’s operation in the 4.9 GHz band would be “incompatible with existing or future public safety uses of the band.”¹⁴⁶ Similarly, AASHTO argues that access by FirstNet would disrupt existing public safety operations, take away current priority treatment in the 4.9 GHz band, and also remove state and local public safety’s ability to design their own networks.¹⁴⁷ As an initial matter, we disagree with commenters suggesting that such a showing is needed as there are multiple public interest benefits that will flow from FirstNet’s future access, including furtherance of FirstNet’s statutory mission,¹⁴⁸ providing additional support and services to its public safety subscribers,¹⁴⁹ and maximizing the overall use of 4.9 GHz band.¹⁵⁰ FirstNet has stated that, if authorized to operate in

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by the Department of Commerce “[d]ue to the importance of maintaining and growing public safety adoption of the NPSBN” and to ensure FirstNet’s adequate oversight of AT&T. OIG Report at 3–4. Upon completing its review, the Assistant Secretary of Commerce and the NTIA were asked to direct FirstNet to comply with three recommendations. See OIG Report at 12. NTIA “concur[ring] with all of the recommendations” stated that it will prepare a formal action plan upon issuance of the OIG’s final report. OIG Report, Appx. B (NTIA’s Response to the Draft OIG Report). We find that NTIA’s response to the draft OIG Report is sufficient to show that the NTIA will ensure that FirstNet satisfies the three recommendations. See NTIA’s Response to the Draft OIG Report; see also MFCA Jul. 8, 2024, *Ex Parte* at 2 (explaining that FirstNet “faces a robust oversight environment”). Because of this, we also find that the OIG Report does not impact our decision to allow FirstNet to integrate the 4.9 GHz band into its NPSBN at this time. We direct FirstNet to notify us when it has met the OIG’s outstanding recommendations. We will continue to monitor AT&T’s performance under the contract and FirstNet’s oversight of AT&T under FirstNet’s license. See, e.g., *February 22, 2024 AT&T Mobility Network Outage Report and Findings*, Report (PSHSB Jul. 22, 2024).

¹⁴⁶ iCERT May 11, 2023, Reply at 5; see also Letter from George Kelemen, Executive Director, Industry Council for Emergency Response Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Feb. 7, 2024) (iCERT Feb. 7, 2024, *Ex Parte*); EEI Jul. 9, 2024, *Ex Parte* at 2. See also Letter from Charlie Vazquez, President, The Florida Police Chiefs Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Sept. 5, 2024) (FPCA Sept. 5, 2024, *Ex Parte*) (arguing that dedicated public safety spectrum that is not currently in use is important for redundancy); Letter from Don Barnes, President, California State Sheriffs’ Association, et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Sept. 23, 2024) (citing FPCA Sept. 5, 2024, *Ex Parte*); Letter from Edgardo Grajales, Director of Volunteer Firefighting Services, Florida State Firefighters Association, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Sept. 27, 2024).

¹⁴⁷ AASHTO Jan. 24, 2024, *Ex Parte*.

¹⁴⁸ PSSA May 24, 2024, *Ex Parte* at 1 (stating that granting FirstNet access gives it “the ability to comply with its statutory mandate to create a nationwide interoperable public safety network that meets the life-saving, mission-critical technological needs of first responders”).

¹⁴⁹ Several commenters note that “many 4.9 GHz incumbents are already subscribers on [FirstNet’s] NPSBN or are eligible to be subscribers.” AASHTO Jan. 24, 2024, *Ex Parte* at 1; see also MFCA Jul. 8, 2024, *Ex Parte* at 2 (“the FirstNet Authority has a network of more than 6 million users and relationships with the commercial vendor community, which will foster the Commission’s goal of greater utilization of the 4.9 GHz network”); MFCA Jul. 8, 2024, *Ex Parte* at 2 (“the FirstNet Authority provides local control to its members, allowing them to directly control priority levels for their personnel and for all personnel responding to incidents in their jurisdiction”); IAFC Apr. 11, 2024, *Ex Parte* at 1 (“FirstNet can eliminate the burden of local communities trying to build out their own public safety communications network. This fact is especially important in rural areas that are geographically larger to cover and have less funding to pay for a local network.”).

¹⁵⁰ See, e.g., NREMT May 30, 2024, *Ex Parte* at 1–2 (“A diverse array of public safety stakeholders have confirmed that deploying 4.9 GHz spectrum on the NPSBN will maximize the use of the band to support public safety use, including 5G.”); PSSA May 24, 2024, *Ex Parte* at 7 (“Such an arrangement will be the most-efficient way of implementing such use and ensuring the full utilization of the band, while still protecting incumbent licensees across the band from harmful interference.”); FirstNet Apr. 13, 2023, Comments at 3 n.12 (“The FirstNet Authority’s mission is in alignment with the FCC’s objectives for the 4.9 GHz band to spur innovative uses in the band and provide increased access to rural, tribal, and other underserved areas.”); IAFC Apr. 11, 2024, *Ex Parte* at 2 (“To ensure greater use of the 4.9 GHz band, it will be helpful to have devices that operate on the 4.9 GHz and FirstNet’s

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the band, it sees the 4.9 GHz band as a “potential avenue to provide enhanced broadband communication services, features, and capabilities—including 5G—for public safety.”¹⁵¹ Commenters likewise stated that authorizing FirstNet’s access in the band would not only aid FirstNet in ensuring that it continues the operation, maintenance, and improvement of its NPSBN, but also in meeting public safety’s need for dedicated 5G spectrum.¹⁵²

35. Based upon the statutory requirement that FirstNet promote competition and utilize equipment that is interoperable and backward-compatible with existing commercial networks, we do not believe that enabling FirstNet’s operations in the band will be incompatible with existing use of the band by incumbent public safety licensees.¹⁵³ We also believe that our decision today will not disrupt existing public safety operations, take away current priority treatment in the 4.9 GHz band, or remove public safety’s ability to design their own networks as our decision today does not authorize the Band Manager or FirstNet to alter or eliminate the rights of incumbent licensees.¹⁵⁴ Instead, our decision authorizes the Band Manager to share the currently unassigned spectrum with FirstNet in a manner that protects

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700 MHz band. Also, it is much more convenient for first responders in emergency situations to access capabilities on the 4.9 GHz and 700 MHz bands on one device.”).

¹⁵¹ FirstNet Apr. 13, 2023, Comments at 2; *id.* at 4 (“First responders nationwide rely on FirstNet to better serve their communities, and opportunities to leverage the 4.9 GHz spectrum to enhance the broadband tools available to and he network experience for the public safety community would undoubtedly further the public interest.”); *see also* FirstNet Apr. 8, 2024, *Ex Parte*.

¹⁵² FirstNet Apr. 13, 2023, Comments at 1; AT&T Jun. 20, 2024, *Ex Parte* at 5; MFCA Jul. 8, 2024, *Ex Parte* at 1 (“The 4.9 GHz band is a mid-band spectrum that can be used to support FirstNet 5G services while protecting incumbent uses in the band. For the fire and emergency service, the 5G spectrum presents an opportunity to develop technology to track firefighters in buildings; support Unmanned Aerial Systems and robots; and improve the data available to an incident commander on the scene in a major incident.”); *see also* Feb. 2022 GAO Report at 11 (“FirstNet officials and AT&T stated that additional spectrum may be required in the future to upgrade the network to 5G and maintain parity with other carriers, as 5G data capabilities function better at spectrum frequencies higher than Band 14.”).

¹⁵³ *See* 47 U.S.C. § 1426(b)(2)(B); *FirstNet Renewal Order*, 38 FCC Rcd at 4999–50, para. 28.

¹⁵⁴ *See generally* MFCA Jul. 8, 2024, *Ex Parte* at 2 (explaining FirstNet’s “focus on priority and ruthless preemption ensures that public safety communications will be completed no matter the size of the disaster area or the status of commercial networks.”); *id.* (“the FirstNet Authority provides local control to its members, allowing them to directly control priority levels for their personnel and for all personnel responding to incidents in their jurisdiction” and “FirstNet users would be able to utilize the 4.9 GHz band alongside its existing operations on the 700 MHz band on one device”). We also note that some stakeholders oppose FirstNet’s access to the 4.9 GHz band based on its contractual relationship with its network partner AT&T, pursuant to which as consideration in that contract, AT&T may use excess network capacity on FirstNet’s NPSBN on a secondary, interruptible basis. *See, e.g.*, CERC Jun. 25, 2024, *Ex Parte* at 4; Verizon Jun. 11, 2024, *Ex Parte* at 2–3; EEI Jul. 9, 2024, *Ex Parte* at 2; Letter from Russell P. Hanser, Deputy Chief Legal Officer, NCTA, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 2–3 (filed Jul. 9, 2024) (NCTA Jul. 9, 2024, *Ex Parte*); OTI & PK Jul. 23, 2024, *Ex Parte* at 3–5; OTI & PK Aug. 7, 2024, *Ex Parte* at 1–2. Similarly, other stakeholders oppose access by FirstNet arguing that providing such access would require incumbents to compete with a commercial entity. *See, e.g.*, Letter from Monte McClain, Vice Chairman, Wyoming Public Safety Communications Commission, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Sept. 27, 2024); *See also* Letter from Kenneth Corey, et al., Chairman, Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Oct. 7, 2024). As AT&T stated, under the model we adopt today, it is not receiving a “license, lease, or other spectrum use authorization for any 4.9 GHz band spectrum.” AT&T Jun. 20, 2024, *Ex Parte* at 13–14. Further, AT&T acknowledges that while it has “secondary, interruptible use rights” as consideration for maintaining and operating FirstNet’s NPSBN, the primary benefit of the Band Manager sharing model we adopt is that “the Band Manager would allow [FirstNet] to use the 4.9 GHz band to support upgrades to the NPSBN.” *Id.*

incumbent licensees' existing operations.¹⁵⁵ In sum, we believe that this decision and the Band Manager's oversight role in this process will increase overall utilization of the band, enhance public safety coordination, and allow incorporation of the latest commercially available technologies into the band.¹⁵⁶

36. In furtherance of this model, we clarify that section 2.103(b) of the Commission's rules may enable any federal stations used by FirstNet to operate in the band pursuant to its anticipated sharing agreement with the Band Manager.¹⁵⁷ Similarly, we also clarify that this section may enable any federal stations used by FirstNet to operate in the band pursuant to a sharing agreement with incumbent licensees where that agreement is also consistent with section 90.1203(b) of our rules.¹⁵⁸ While federal entities generally are not authorized by the Commission to use non-federal frequencies, limited exceptions exist

¹⁵⁵ T-Mobile argues that the Commission must add the 4.9 GHz band to the spectrum screen if it finds that the band should be "added to FirstNet's license" and suggests that AT&T's secondary access means the spectrum will be "principally available for mobile broadband services." See T-Mobile May 15, 2023, Reply at 15–16. We disagree. The current standard for evaluating whether bands should be included in the spectrum screen is whether the spectrum is "suitable" and "available" for the provision of mobile telephony/mobile broadband services. *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6170, para. 75 (2014) (*MSH Report and Order*). In the *MSH Report and Order*, the Commission reasoned that because the Upper 700 MHz spectrum reallocated to FirstNet is designated for public safety purposes, it "is [not] suitable and available for the provision of mobile telephony/mobile broadband services" and "[w]e will not add to the screen any of this spectrum merely because FirstNet has entered into leasing arrangements contemplated by the [Spectrum] Act." *Id.* at 6188, paras. 129–30. Consistent with this past precedent, we will not include the 4.9 GHz band in the spectrum aggregation screen as the 4.9 GHz band is primarily allocated for public safety and is therefore not suitable and available for the provision of mobile telephony/mobile broadband services in the same manner as other spectrum bands that currently are included in the Commission's spectrum screen.

¹⁵⁶ See, e.g., iCERT May 11, 2023, Reply at 5; Fraternal Order of Police, et al., Apr. 26, 2024, *Ex Parte* at 1–3 ("The most efficient and cost-effective way to achieve this goal is to grant a nationwide license to FirstNet, or similarly alternative means that are found to be procedurally appropriate, which may include the sharing agreement as articulated by PSSA."); CalChiefs Mar. 27, 2024 *Ex Parte* at 2; SWD Feb. 22, 2024, *Ex Parte* ("FirstNet is vitally important to interoperability"); IAFC Feb. 16, 2024, *Ex Parte*; IAFF Feb. 16, 2024, *Ex Parte*; Fraternal Order of Police Feb. 13, 2024, *Ex Parte*.

¹⁵⁷ CERC I argues that FirstNet cannot lease or otherwise receive usage rights for the 4.9 GHz band from a Band Manager without violating the Anti-Deficiency Act (ADA). See CERC I May 10, 2024, *Ex Parte* at 5–7 ("The ADA provides, in relevant part, that 'an officer or employee of the United States Government' may not 'involve [the U.S.] government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.'"); *id.* ("But Congress has not appropriated funds for [FirstNet] to lease a nationwide spectrum band worth approximately \$15 billion. Nor has Congress otherwise 'authorized by law' that [FirstNet] may undertake such a leasing arrangement or commit itself to constructing and operating facilities using that spectrum."); see also 31 U.S.C. § 1341(a)(1)(B). FirstNet, as an independent establishment within NTIA, has been given broad general powers by Congress. 47 U.S.C. § 1426(a). How a separate agency satisfies the applicable requirements of Title 31 of the U.S. Code, including the ADA, consistent with its organic grant of authority from Congress is not within the FCC's purview. That said, we note that FirstNet has been given broad general powers by Congress in support of its NPSBN, with authority to "obtain grants and funds from and make contracts with" various entities; to "accept, hold, administer, and utilize gifts, donations, and bequests of property"; to "spend funds" for purposes that will advance or enhance public safety communications; and to "take such other actions as may be necessary" to further its statutory mission. 47 U.S.C. § 1426(a); see also PSSA May 24, 2024, *Ex Parte* at 5; NREMT May 30, 2024, *Ex Parte* at 4 (arguing that Congress did not need to appropriate specific funds for FirstNet operations in the 4.9 GHz band because FirstNet is authorized by law to use the 4.9 GHz band in support of the nationwide public safety broadband network). Moreover, as CERC I acknowledges, details about any sharing arrangement between the Band Manager and FirstNet have not been finalized, making any ADA challenge premature. See CERC I Jun. 6, 2024, *Ex Parte* at 5; CERC I Jul. 10, 2024, *Ex Parte* at 7.

¹⁵⁸ 47 CFR § 90.1203(b).

where the Commission finds that doing so would be in the public interest, as codified in section 2.103.¹⁵⁹ The Commission has found that both federal and non-federal public safety entities “could benefit from the same broadband communications technologies contemplated for this band.”¹⁶⁰ Thus, we agree that the current structure of section 2.103 permits federal stations meeting certain conditions to operate on non-Federal spectrum and may in the instant scenario permit federal stations used by FirstNet to access the Band Manager’s licensed spectrum pursuant to the anticipated sharing agreement.¹⁶¹

37. Although we are not making a determination today regarding whether all of the requirements in section 2.103(b) of our rules are met—as that determination would be premature given the Band Manager and FirstNet have yet to enter into a sharing agreement—we anticipate that section 2.103(b) would enable any federal stations used by FirstNet to access the 4.9 GHz band pursuant to such future sharing agreement and direct the Band Manager, once selected, and FirstNet to follow the relevant procedures established in the 700 MHz context.¹⁶² We believe that this approach closely aligns with our decision in the *Third Report and Order* to allow licensees to enter into agreements with federal entities, and in the *700 MHz Service Rules Report and Order* where we permitted federal government use of 700 MHz public safety spectrum.¹⁶³

C. Band Manager Responsibilities

38. Based on the record in response to the *Ninth Further Notice* and our decision today, we clarify that the Band Manager will continue to be tasked with the responsibilities that the Commission assigned to it in the *Seventh Report and Order*.¹⁶⁴ We also amend our rules to give the Band Manager

¹⁵⁹ See *4.9 GHz Third Report and Order*, 18 FCC Rcd at 9163, para. 25 n.76 (citing *700 MHz Second Report and Order*, 15 FCC Rcd at 5313, paras. 64–66) (“Although Section 305 of the Act precludes the Commission from licensing stations belonging to and operated by the federal Government, NTIA, the entity empowered with managing federal use of spectrum, agrees that such restrictions do not bar federal entities from use of spectrum managed by the Commission.”).

¹⁶⁰ *4.9 GHz Third Report and Order*, 18 FCC Rcd at 9163, para. 25.

¹⁶¹ See 47 CFR § 2.103(b); see also AT&T Jun. 20, 2024, *Ex Parte* at 4 (“[FirstNet] could obtain access to the band under this rubric today because its stations would be used for interoperability, the Band Manager would provide approval on behalf of incumbent licensees, operation would be in accordance with applicable rules, and [FirstNet] is authorized by the [2012] Act to enter into any necessary agreements with the Band Manager”); NREMT May 30, 2024, *Ex Parte* at 1–2, 3; PSSA May 24, 2024, *Ex Parte* at 6–7. We note that CERC’s arguments as it pertains to its opposition of PSSA’s proposal to amend section 2.103 does not apply to our decision today because we are not amending that rule. See CERC May 10, 2024, *Ex Parte* at 2–4.

¹⁶² See generally *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 185, para. 67 (1998) (*700 MHz Service Rules Report and Order*) (“Requests for Federal use of 700 MHz band frequencies must be filed with the Commission by the state or local governmental licensee (for the 700 MHz band frequencies involved) that supports the Federal use. Additionally, Federal entities must submit their requests to use non-Government spectrum with NTIA in accordance with Section 305 of the Act.”); *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, Second Memorandum Opinion and Order, 15 FCC Rcd 16844, 16866–69, paras. 47–54 (2000) (*700 MHz Second MO&O*).

¹⁶³ *4.9 GHz Third Report and Order*, 18 FCC Rcd at 9163, para. 25; see also *700 MHz Service Rules Report and Order*, 14 FCC Rcd at 184–87, paras. 63–69 (“Although we conclude herein that Federal entities are ineligible for Commission licensing in the 700 MHz band, they are eligible to receive authorization to use this spectrum in accordance with the requirements set forth in Section 2.103 of our rules for Government use of non-Government spectrum.”); *700 MHz Service Rules Report and Order*, 14 FCC Rcd at 186, para. 67; *700 MHz Second MO&O*, 15 FCC Rcd at 16863–68, paras. 41–54.

¹⁶⁴ See *Seventh Report and Order*, 38 FCC Rcd at 713–14, paras. 23–24; see also 47 CFR § 90.1217(a)–(c) (“The 4.9 GHz Band Manager will have the following three primary responsibilities: (a) Frequency coordination for
(continued....)”)

additional responsibilities to effectively implement the licensing and sharing regime described above.¹⁶⁵ Thus, the Band Manager's primary responsibilities will now include: (1) frequency coordination and interference protection for the operations of existing incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivizing the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. We also decline to make a determination as it pertains to allowing non-public safety operations in the band through a Band Manager-facilitated leasing model as this is not the best method of increasing utilization of the band at this time.

1. Frequency Coordination and Interference Protection for Incumbent Licensees

39. In the *Seventh Report and Order*, the Commission stated that the Band Manager would be responsible for performing the frequency coordination function for public safety applicants seeking to license new or modify existing facilities in the band, thus ensuring the efficient assignment and use of spectrum by public safety licensees.¹⁶⁶ In doing so, the Commission noted that the Band Manager is responsible for advising and helping public safety licensees to design their deployments in order to promote efficient and robust use of the band and prevent harmful interference to other licensees.¹⁶⁷ The Commission explicitly stated that the Band Manager does not have the authority to disallow proposed public safety operations or otherwise limit public safety operations once a public safety entity is licensed to operate in the band.¹⁶⁸ Instead, notwithstanding the current administrative freeze on new public safety license applications and modifications,¹⁶⁹ the Band Manager will provide public safety licensees and applicants with recommendations for the technical characteristics of a proposed system, subject to Commission review in the case of any objections to such recommendations.¹⁷⁰

40. The Commission also stated in the *Seventh Report and Order* that the Band Manager will perform its frequency coordination duties consistent with the Commission's rules and with input from public safety licensees and applicants to ensure that they are able to access sufficient spectrum for their operations.¹⁷¹ In establishing that the Band Manager is responsible for frequency coordination and management of the public safety operations, the Commission sought comment on issues related to the scope and implementation of the Band Manager's frequency coordination responsibilities.¹⁷² While commenters are divided on whether and when the Commission should adopt specific interference

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public safety applications; (b) Incentivizing the use of the latest commercially available technologies, including 5G; and (c) Facilitating non-public safety use of the 4.9 GHz band.”).

¹⁶⁵ Specifically, our decision today does not eliminate the three primary responsibilities assigned to the Band Manager, but rather adds to the Band Manager's responsibilities in an effort to increase public safety use of the band. See generally WISPA Jul. 11, 2024, *Ex Parte* at 5 (“Requests for the Commission to appoint a nationwide licensee are essentially a late-filed petition for reconsideration that ask the Commission to revisit the Band Manager model and eliminate the three primary responsibilities assigned to the Band Manager.”); see also OTI & PK Jul. 23, 2024, *Ex Parte* at 2; OTI & PK Aug. 7, 2024, *Ex Parte* at 2.

¹⁶⁶ *Seventh Report and Order*, 38 FCC Rcd at 713–14, paras. 23–24.

¹⁶⁷ *Id.* at 713–14, paras. 23–24.

¹⁶⁸ *Id.* at 713–14, paras. 23–24.

¹⁶⁹ See *infra*, section III(E).

¹⁷⁰ *Seventh Report and Order*, 38 FCC Rcd at 713–14, paras. 23–24.

¹⁷¹ *Id.* at 713–14, 718–21, paras. 23–24, 36–43; *Ninth Further Notice*, 38 FCC Rcd at 732–36, paras. 73–86.

¹⁷² *Ninth Further Notice*, 38 FCC Rcd at 732–36, paras. 73–86.

criteria,¹⁷³ a majority of commenters generally support the adoption of rules that require the Band Manager to protect incumbent users.¹⁷⁴ For example, CERCi notes that protection of incumbent users is a critical need because “public-safety systems must be tailor-made to best fit the needs of each jurisdiction” and public safety licensees must continue to have the right to “build, own, and operate locally implemented public-safety systems to meet local needs.”¹⁷⁵ Similarly, the National Fraternal Order of Police, IAFF, and IACP, in expressing support for allowing FirstNet to access the band, ask the Commission to ensure that “[i]ncumbent 4.9 GHz licensee operations [are] protected and continue without any interference to existing communication networks.”¹⁷⁶

41. After review of the record, we revise the Band Manager’s responsibilities such that it will be responsible for frequency coordination and interference protection for incumbent public safety licensees, as outlined in our current and any future rules that may be adopted for this band.¹⁷⁷ With

¹⁷³ See, e.g., AASHTO Apr. 10, 2023, Comments at 4; APCO Apr. 13, 2023, Comments at 10; BART Mar. 30, 2023, Comments at ii, 4; EEI Apr. 13, 2023, Comments at 11; Federated Wireless Apr. 13, 2023, Comments at 18–19; Qualcomm Apr. 13, 2023, Comments at 11–12 (the adoption of specific interference criteria “may unduly constrain the Band Manager’s ability to improve the band’s utilization for enhanced public safety while supporting non-public safety applications”); *id.* (“The Band Manager should be empowered to ensure public safety operations are protected from interference.”); TDD Apr. 13, 2023, Comments at 4–5; Motorola Apr. 13, 2023, Comments at 7 (“Fundamentally, the process should be accommodating to a multiplicity of technologies and network deployments including fixed, point-to-point, point-to-multipoint, and mobile operations. [Motorola] sees no reason to standardize technology usage in the band or mandate the use of any particular spectrum.”); GWTCa May 1, 2023, Reply at 2; Cal OES May 15, 2023, Reply at 3 (“In the case of frequency use that must be coordinated along state borders, the Band Manager can make recommendations to mitigate interface and maximize the use of the band to support each state’s plan.”); Federated Wireless May 15, 2023, Reply at 5–6 (“There is established precedent for the Commission to define the interference protection criteria.”); MTA May 15, 2023, Reply at 5 (citing BART Mar. 30, 2023, Comments); NCTA May 15, 2023, Reply at 1–4 (adopting a band-specific definition “is unnecessary and would set a problematic precedent that could inhibit efficient coexistence in other spectrum bands”); WISPA May 15, 2023, Reply at 18–19 (reiterating the definition of “harmful interference” from section 90.7).

¹⁷⁴ See, e.g., iCERT Apr. 10, 2023, Comments at 3 (“The Band Manager’s inclusion is necessary to ensure it can adequately fulfill its responsibilities for promoting band sharing arrangements that support the interests of all affected licensees.”); BART Mar. 30, 2023, Comments at 4–6 (proposing that “[t]he 4.9 GHz Band Manager will be responsible for protecting incumbent licensees from harmful interference”); PSSA Apr. 12, 2023, Comments at 17 (“[PSSA] believes all oversight, enforcement, and dispute resolution with respect to the 4.9 GHz Band should be handled by the Nationwide Licensee with the assistance of the band manager through processes determined by the Nationwide Licensee.”); EEI Apr. 13, 2023, Comments at 11; Cal OES May 15, 2023, Reply at 3; Federated Wireless May 15, 2023, Reply at 5–6; MTA May 15, 2023, Reply at 5 (citing BART Mar. 30, 2023, Comments).

¹⁷⁵ CERCi Feb. 6, 2024, *Ex Parte* at 3–4; see also Letter from Greg Kunkle, Counsel to Metropolitan Transportation Authority, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 1–2 (filed Jun. 11, 2023) (MTA Jun. 11, 2024, *Ex Parte*); CalChiefs Mar. 27, 2024, *Ex Parte* at 2 (“Frequency coordination can mitigate the threat of interference, while simultaneously allowing for the 4.9 GHz spectrum to be operationalized” by FirstNet); IACP Feb. 14, 2024, *Ex Parte* at 2 (urging “the Commission to protect and preserve the 4.9 GHz spectrum for public safety use” and “protect incumbent public safety users”); CalChiefs Mar. 27, 2024, *Ex Parte* at 2 (“Where the band is in use today by state and local entities, we recommend the FCC adopts reforms to preserve priority access to the band for incumbent licensees, so they can continue their existing operations.”); SWI Jun. 3, 2024, *Ex Parte* at 1 (“emphasiz[ing] the need to retain the 4.9 GHz spectrum for direct public safety use and to protect existing licensees’ operations”); PSSA Apr. 23, 2024, *Ex Parte* at 4 (asking the Commission to clarify that one of the Band Manager’s responsibilities includes “protecting incumbent operations from harmful interference”).

¹⁷⁶ Fraternal Order of Police, et al., Apr. 26, 2024, *Ex Parte* at 1.

¹⁷⁷ See 47 CFR § 90.1217(a). We have not made a determination as it pertains to the implementation of the criteria for harmful interference and mediation that we sought comment on in the *Ninth Further Notice*. 38 FCC Rcd at 732–36, paras. 75–86. Consequently, since we are declining to adopt a definition for harmful interference at this time, we remove a cross-reference in section 90.175(g)(2) of our rules which refers to the Band Manager performing its frequency coordination duties according to an interference standard adopted by the Commission. We remind all
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respect to protecting incumbent public safety licensees from harmful interference, we emphasize the importance of the collection of granular technical data that the Commission initiated in the *Seventh Report and Order* as the results will aid the Band Manager in identifying specific frequency usage across all deployments in the band, performing its role as frequency coordinator, and pinpointing potentially unused channels within areas covered by certain geographic licenses.¹⁷⁸ Consistent with the Commission's decision in the *Seventh Report and Order*, and notwithstanding the limitations imposed by the current administrative freeze on public safety license applications and modifications, incumbent licensees will be given the opportunity to work with the Band Manager to optimize and coordinate their spectrum use. Moreover, we also require the Band Manager to consider the incumbents' input when performing its frequency coordination duties and when authorizing operations in the band, including pursuant to the Band Manager's sharing agreement with FirstNet.¹⁷⁹ We believe that this decision will best advance our goal of preserving and expanding use to a variety of primary public safety operations while also ensuring adequate protections for incumbent operations.

2. Managing a Spectrum Sharing Agreement with FirstNet

42. For the reasons set forth in greater detail *supra*, we intend to issue a nationwide overlay license to the Band Manager, once selected, and authorize the Band Manager to enter into a sharing agreement with FirstNet for use of unassigned spectrum in the band.¹⁸⁰ Consistent with this responsibility, the Band Manager will be authorized to share its licensed spectrum with FirstNet, enabling it to operate on any otherwise unassigned channel in the 4.9 GHz band pursuant to the current section 2.103(b) and new section 90.1207(h) of the Commission's rules and the terms of the sharing agreement.¹⁸¹ To ensure the efficient use of the band, we also find it appropriate to establish parameters that the Band Manager must abide by when entering into its sharing agreement with FirstNet. PSSA proposes that FirstNet's operations pursuant to the sharing agreement should be contingent upon FirstNet's compliance with the Commission's rules governing this band, inclusion of any conditions agreed upon by the Commission and the NTIA, and prevention and mitigation of any harmful interference to incumbent licensees.¹⁸² After review of the record, we agree that any sharing agreement entered into by FirstNet and

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licensees that they should continue to utilize the definition of "harmful interference" that is already defined in the Commission's part 90 rules. 47 CFR § 90.7 (defining harmful interference as "any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the services provided by such stations").

¹⁷⁸ See *Seventh Report and Order*, 38 FCC Rcd at 717–18, para. 34; see 47 CFR § 90.1207(e)(1)–(2). CERC argues that prior to the Commission implementing "any plan to transfer the 4.9 GHz band from local public safety to [FirstNet]," it must first conduct the granular licensing data collection "which is presumably a prerequisite for the Commission to ensure adequate, enforceable, and lasting protection for" incumbent licensees. Letter from Roger C. Sherman, CERC Policy Advisor, Coalition for Emergency Response and Critical Infrastructure et al., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 1–2 (filed Sept. 18, 2024) (CERC Sept. 18, 2024, *Ex Parte*). While we believe that the results of the granular licensing data collection will be a vital tool that will aid the Band Manager in performing its frequency coordination and interference protection duties, the results of the data collection are not required for us to authorize the overlay licensing process and sharing agreement framework described herein.

¹⁷⁹ *Seventh Report and Order*, 38 FCC Rcd at 713–14, paras. 23–24. Our decision today clarifies that the Band Manager and FirstNet may enter into a sharing agreement pursuant to section 2.103(b) of our rules. Thus, in accordance with that section, we will only require the consent of the licensee that is entering into the sharing agreement with FirstNet. See generally MTA Jun. 11, 2024, *Ex Parte* at 1–2 ("to the extent FirstNet engaged in the shared use of unused portions of the 4.9 GHz band, that it be required to obtain consent from potentially impacted incumbent licensees, such as MTA").

¹⁸⁰ See *supra*, sections III(A), (B).

¹⁸¹ See, e.g., 47 CFR § 90.1203, *et seq.*

¹⁸² See *supra* note 174 (citing PSSA Apr. 12, 2023, Comments at 17).

the Band Manager should be contingent upon compliance with these requirements. We believe that this will ensure that incumbent licensees are protected from interference, that the sharing agreement comports with section 2.103(b) of the Commission's rules, and that FirstNet operates in accordance with the Commission's rules governing operation in the band.

43. Prior to entering into its sharing agreement with FirstNet, the Band Manager will be required to make a filing associated with its license in ULS certifying to the Commission that the sharing agreement will be consistent with sections 2.103(b) and 90.1207(h) of the Commission's rules, and operations undertaken per the sharing agreement will not cause harmful interference to incumbent licensees.¹⁸³ If such interference occurs, the Band Manager must require FirstNet to immediately cease operations. We will also require the Band Manager to certify that FirstNet has placed stations in operation within twelve months from the execution date of the sharing agreement.¹⁸⁴ We believe that this decision is consistent with our decision in the *Seventh Report and Order* to harmonize the construction deadlines for the 4.9 GHz band with the deadlines of section 90.155, which is the analogous rule for the majority of part 90 radio services.¹⁸⁵ We delegate authority and direct the Bureaus to establish the form and process for the submission of the required certifications detailed *supra*.¹⁸⁶ Finally, we find that the existing renewal standards and requirements that apply to our part 90 licenses will apply to the nationwide overlay license.¹⁸⁷

3. Technological Innovation

44. In the *Seventh Report and Order*, the Commission found that the Band Manager would be responsible for determining and recommending, as part of a spectrum plan for the band and for the benefit of any interested licensees and lessees, how best to incorporate the latest commercially available technologies, including 5G, into the 4.9 GHz band in a manner that supports and protects public safety operations.¹⁸⁸ The Commission also sought comment in the *Ninth Further Notice* on how to encourage the widespread deployment of the latest commercially available technologies in a way that would promote

¹⁸³ In its *ex parte*, CERC I argues that “[u]nder the private non-delegation doctrine, ‘a private entity may wield government power only if it ‘functions subordinately’ to an agency with ‘authority and surveillance’ over it.’” CERC I May 10, 2024, *Ex Parte* at 8–9 (citing *Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black*, 53 F.4th 869, 881 (5th Cir. 2022)); see also CERC I Jul. 10, 2024, *Ex Parte* at 9–10. CERC I further states that “Congress or an agency may delegate governmental authority to a private entity only if that entity’s ‘role is merely ‘as an aid’ to a government agency that retains the discretion to ‘approve[], disapprove[], or modify[]’ them.” *Id.* (citing *Ass’n of Am. R.R.s v. U.S. Dep’t of Transp.*, 721 F.3d 666, 671 (D.C. Cir. 2013) (quoting *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 388 (1940)), *vacated and remanded on other grounds*, 575 U.S. 43 (2015)). Our decision today does not “delegate governmental authority” to the Band Manager in a manner that allows the Band Manager to make decisions without Commission oversight. Instead, the Band Manager would operate as an FCC licensee, to whom the Commission would issue a nationwide overlay license. Prior to entering into a sharing agreement for use of spectrum pursuant to that license, the Band Manager will be required to make a filing in ULS that includes certifications to the Commission.

¹⁸⁴ See 47 CFR § 90.1209(d) (“Stations must be placed into operation within twelve (12) months from the date of grant in accordance with § 90.155. Licensees of temporary fixed stations must place at least one such station in operation within twelve months of license grant.”).

¹⁸⁵ *Seventh Report and Order*, 38 FCC Rcd at 729, para. 66 (citing 47 CFR § 90.155).

¹⁸⁶ We likewise direct the Bureaus to utilize the Commission’s recent decision as a guide when establishing the form and process for this certification. See *Single Network Future: Supplemental Coverage from Space, Space Innovation*, WP Docket No. 23-65 and IB Docket No. 22-271, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-28, at 44–46, paras. 105–09 (rel. Mar. 15, 2024) (*SCS Report and Order*).

¹⁸⁷ See 47 CFR § 1.949 (application for renewal of authorization).

¹⁸⁸ *Seventh Report and Order*, 38 FCC Rcd at 714–15, paras. 25–27.

interoperability while also lowering equipment costs.¹⁸⁹ In keeping with our ultimate goal of protecting public safety operations, we want to reemphasize that in the *Seventh Report and Order* the Commission declined to mandate the use of such technologies in the band. We also want to remind stakeholders that the Commission required the Band Manager to seek input from and work with incumbent licensees to facilitate the deployment of advanced wireless technologies in a manner that supports and protects public safety users. We believe that in addition to designating the Band Manager to develop this spectrum plan, our decision today to enable FirstNet’s access to unassigned portions of the band is another step towards reaching our goal of incentivizing use of the latest commercially available technologies in the band. We agree with commenters, such as the National Fraternal Order of the Police, IAFC, and IAFF, that leveraging FirstNet’s NPSBN is one of the most “efficient and cost-effective way[s] to reach this goal.”¹⁹⁰

4. Non-Public Safety Access through Leasing

45. In the *Seventh Report and Order*, the Commission determined that it would open up the band to include non-public safety operations which would rely on a Band Manager-facilitated spectrum leasing framework premised on the Band Manager’s analysis of where, when, and at what frequencies non-public safety operations can take place without impacting public safety operations.¹⁹¹ The Commission tasked the Band Manager with the responsibility of identifying, based on consultation with relevant public safety licensees and its own expertise, situations where there are unused spectrum access opportunities.¹⁹² The Commission reasoned that this cooperative process would enable the Band Manager to take advantage of both its expertise on 4.9 GHz band public safety operations and its extensive links with the public safety community to identify spectrum access opportunities potentially available to non-public safety entities with flexibility to permit regional variation and maximize spectrum use, but also enough consistency to ensure full protection for current and future public safety operations.¹⁹³

46. To implement the non-public safety leasing framework, the Commission sought comment on two possible means of enabling Band Manager-coordinated non-public safety leasing, as well as general considerations for creating an effective leased access model for the band, in particular, the need to ensure non-discriminatory treatment of potential lessees.¹⁹⁴ Stakeholders were divided in the record with some commenters advocating for Model 1¹⁹⁵ and some for Model 2.¹⁹⁶ Other commenters did not express

¹⁸⁹ *Ninth Further Notice*, 38 FCC Rcd at 737, paras. 89–90.

¹⁹⁰ Fraternal Order of Police, et al., Apr. 26, 2024, *Ex Parte* at 1–3; Fraternal Order of Police Feb. 13, 2024, *Ex Parte* (“making the 4.9 GHz spectrum available for nationwide FirstNet 5G deployment is the most expedient and impactful way we can operationalize the 4.9 GHz spectrum”); see also CalChiefs Mar. 27, 2024, *Ex Parte* at 1–2; NREMT May 30, 2024, *Ex Parte* at 3 (allowing the integration of the NPSBN into the band will “facilitate improved 5G capabilities for a wide range of public safety users in the band”).

¹⁹¹ *Seventh Report and Order*, 38 FCC Rcd at 714–15, 721–23, paras. 25–27, 44–49.

¹⁹² *Id.* at 714–15, 723, paras. 25–27, 48.

¹⁹³ *Id.*

¹⁹⁴ *Ninth Further Notice*, 38 FCC Rcd at 737–45, paras. 93–134. Under Model 1, the Band Manager would lease spectrum access rights directly from public safety licensees and would, in turn, be permitted to sublease those rights to non-public safety entities. *Id.* at 738, paras. 95–96. Under Model 2, public safety licensees would be permitted to lease directly to non-public safety entities so long as those leases are coordinated through and approved by the Band Manager. *Id.* at 738–39, paras. 97–99.

¹⁹⁵ See, e.g., APCO Apr. 13, 2023, Comments at 5–8 (noting that “Model 1, in which the band manager serves as a lessee/sublessor, has some advantages,” but arguing that the Band Manager should only have to notify affected licensees of prospective leases, because obtaining individual consents would be inefficient, and licensees should not have veto power over leasing arrangements); MTA May 15, 2023, Reply at 8 (“MTA’s primary concern is the ongoing viability of the Band Manager. Of the two models proposed by the FCC (direct lease by licensees vs. Band Manager as lessor), the model in which the Band Manager leases spectrum directly seems to most likely to achieve this goal.”).

strong support for either model, and instead offered views on how the Commission should change or ultimately stray away from the proposed models.¹⁹⁷ The record was also divided on whether the Commission should allow leasing to non-public safety entities, and if so, whether the Commission should limit the type of non-public safety entities that were eligible to gain access.¹⁹⁸

47. In light of this divided record, and the strong support for maintaining and strengthening the public safety nature of this band, we decline to further implement a non-public safety leasing framework at this time. In making this determination, we remain committed to increasing use of this band and to decreasing equipment costs and encouraging greater innovation. We also recognize that this spectrum hosts important public safety uses, and that protecting and expanding these uses requires a regulatory regime that is clear, predictable, and nationwide. Based on the lack of consensus in the record at this time, selecting one of the proposed leasing frameworks over another may not achieve our intended goals. For the reasons outlined above, we therefore decline to adopt additional rules establishing a non-public safety leasing framework at this time. However, we remain open to the possibility of future non-public safety operations in the band, and reserve the right to revisit this issue at a later date. Until such time as the Commission takes further action on this issue, the Band Manager's responsibility to facilitate non-public safety leasing shall be a review of the overall status of the band as part of its annual reporting requirement discussed *infra*.

5. Annual Reporting Requirement

48. In the *Seventh Report and Order* the Commission adopted an annual reporting requirement that will allow the Commission to oversee the Band Manager, ensure its activities advance the Commission's stated goals for this band, and provide greater transparency, certainty, and predictability in the 4.9 GHz band.¹⁹⁹ In the *Ninth Further Notice* the Commission sought comment on

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¹⁹⁶ See, e.g., AASHTO Apr. 10, 2023, Comments at 6–7; BART Mar. 30, 2023, Comments at 13; Caltrans Apr. 11, 2023, Comments at 5–6 (recommending that the Commission supply more specifics regarding Model 2); EEI Apr. 13, 2023, Comments at 11–13; FPL Apr. 13, 2023, Comments at 6; Motorola Apr. 13, 2023, Comments at 4–5; UTC Apr. 13, 2023, Comments at 5–6; BART May 15, 2023, Reply at 3; William Bratton et al. May 15, 2023, Reply at 6; Maryland DoIT May 15, 2023, Reply at 1–2, 7–9; Verizon May 15, 2023, Reply at 8–9.

¹⁹⁷ See, e.g., BART Mar. 30, 2023, Comments at 15; EEI Apr. 13, 2023, Comments at 12; iCERT Apr. 10, 2023, Comments at 5 (“While facilitating spectrum leases is a primary role of the Band Manager, incumbent public safety licensees should not be denied the right to negotiate directly with those interested in using the band for non-public safety purposes.”); Maryland Apr. 13, 2023, Comments at 6–8 (the Band Manager's authority should also include “coordinating operations, including by approving the specifics of lessee deployments to ensure no harmful interference is created”); *id.* at 6–7 (“adoption of both models allowing licensees to choose as between the two, will best enable the Commission to achieve its goals in this proceeding”); Motorola Apr. 13, 2023, Comments; PSSA Apr. 12, 2023, Comments at 9; UTC Apr. 13, 2023, Comments at 5; WISPA Apr. 13, 2023, Comments at 9–10, 12–13 (In the context of competing leases, WISPA states that “[a]llowing the Band Manager to make an arbitrary decision would lead to disputes . . .”); Cal OES May 15, 2023, Reply at 5 (opposing non-public safety use of the band but “[w]ith Model 2, Cal OES recommends that the state use of the band supersede federal plans when determining how the 4.9 GHz spectrum will be used to support public safety in each state.”); GWTC May 1, 2023, Reply at 4; Maryland DoIT May 15, 2023, Reply at 1–2; WISPA Jul. 11, 2024, *Ex Parte* at 6.

¹⁹⁸ See, e.g., AASHTO Apr. 10, 2023, Comments at 6; APCO Apr. 13, 2023, Comments at 17; Coalition Apr. 13, 2023, Comments at 3; EEI Apr. 13, 2023, Comments at 9; iCERT Apr. 10, 2023, Comments at 2; TDD Apr. 13, 2023, Comments at 6; BART May 15, 2023, Reply at 4; GWTC May 1, 2023, Reply at 3; iCERT May 11, 2023, Reply at 2; Motorola May 15, 2023, Reply at 5; WISPA May 15, 2023, Reply at 2; EEI Jul. 9, 2024, *Ex Parte* at 2–3; WISPA Jul. 11, 2024, *Ex Parte* at 2–3; Letter from Brett Kilbourne, Senior Vice President and General Counsel, Utilities Technology Council, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 2 (filed Jul. 19, 2024) (UTC Jul. 19, 2024, *Ex Parte*).

¹⁹⁹ *Seventh Report and Order*, 38 FCC Rcd at 725, paras. 55–56. The Commission noted that band managers in other frequency bands, such as the 700 MHz Guard Band licensee and 220 MHz band manager, are required to submit annual reports. *Id.* at 725, para. 55 n.141; see also 47 CFR § 27.607; see also *Annual Guard Band Reports*, (continued....)

what information should be included in the annual reports, and tentatively concluded that the annual report should include certain detailed descriptions of the Band Manager's efforts.²⁰⁰ In support of this requirement, the Coalition and APCO agreed that the Band Manager should submit annual reports as indicated by the Commission.²⁰¹ The Coalition also suggested that the reports include "the speed with which coordination requests are processed, any instances of reported interference, how and how quickly such instances were resolved, an inventory of leases approved, and other matters that bear on the band manager's performance of its duties."²⁰²

49. We continue to believe that the annual reporting requirement will facilitate Commission oversight, improve transparency, and help to ensure that the 4.9 GHz band is put to its highest and best use.²⁰³ Although we believe a review of the overall status of the band is one important element in any such report, we believe it would be premature to establish the specific form and content of the reports at this time. Accordingly, we direct the Bureaus to establish the specific form and content of the annual reports, including by issuing public notices as necessary to obtain additional comment. We likewise direct the Bureaus to use the Commission's past decisions as a guide when implementing this responsibility.²⁰⁴ The Commission reserves the right to impose more stringent reporting requirements on the Band Manager in the future based on feedback from impacted stakeholders and as events warrant. The Commission will make the annual reports available to the public in order to create greater transparency, certainty, and predictability in the 4.9 GHz band. We also reserve the right to subject the Band Manager to audits using in-house and contract resources. For all the reasons noted above and in the *Seventh Report and Order*, we conclude that our imposition of a reporting requirement constitutes an effective safeguard and performance requirement for the Band Manager.

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FCC (Aug. 2, 2022), <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/700-mhz-guard-bands/annual-guard-band-reports>.

²⁰⁰ *Ninth Further Notice*, 38 FCC Rcd at 737, paras. 91–92. The Commission also sought general comment on the role the Commission and the Bureaus should play in overseeing the Band Manager's decisions. *Id.* at 747–48, paras. 143–47.

²⁰¹ Coalition Apr. 13, 2023, Comments at 8; APCO Apr. 13, 2023, Comments at 11. The Commission did not receive any other comments supporting or opposing the annual reporting requirement.

²⁰² Coalition Apr. 13, 2023, Comments at 8.

²⁰³ *Seventh Report and Order*, 38 FCC Rcd at 725, paras. 55–56. The Commission noted that band managers in other frequency bands, such as the 700 MHz Guard Band licensee and 220 MHz band manager, are required to submit annual reports. *Id.* at 725, para. 55 n.141; *see also* 47 CFR § 27.607; *see also Annual Guard Band Reports*, FCC (Aug. 2, 2022), <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/700-mhz-guard-bands/annual-guard-band-reports>. We also believe that this decision aligns with views expressed by commenters that the Commission should oversee the Band Manager's responsibilities. *See, e.g.*, BART Mar. 30, 2023, Comments at 11–12 ("the report also should address how the [Band] Manager is supporting the original purpose of the 4.9 GHz band—making sure that uses by the public safety community are protected against harmful interference . . ."); *id.* ("The [Band] Manager also should demonstrate in the Annual Report how they address the local and regional needs of the public safety community, such as establishing advisory roles for representatives on a geographically diverse basis."); APCO Apr. 13, 2023, Comments at 17; Joint Apr. 13, 2023, Comments at 8; Caltrans Apr. 11, 2023, Comments at 7; IAFC Apr. 13, 2023, Comments at 2; iCERT Apr. 10, 2023, Comments at 4–5; GWTCA May 1, 2023, Reply at 7–8; WISPA May 15, 2023, Reply at 10.

²⁰⁴ *See generally Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5332–33, paras. 75–80 (2000); *Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220–222 MHz Band*, WT Docket No. 02-224, Memorandum Opinion and Order, 17 FCC Rcd 20464, 20470, para. 17 (2002); *SCS Report and Order*, FCC 24-28, at 44–46, paras. 105–9 (adopting 47 CFR § 1.9047(e)).

D. Selection of the Band Manager

50. In the *Seventh Report and Order*, the Commission concluded that the Band Manager would be identified by a selection committee to be named by the Commission and it sought comment on the nature of that committee and its processes in the *Ninth Further Notice*.²⁰⁵ In particular, the Commission sought comment on whether it should “direct specific organizations to designate a representative to serve on the selection committee” and whether the committee should include representatives of non-public safety users of the band in addition to public safety representatives.²⁰⁶ The Commission also tentatively concluded in the *Ninth Further Notice* that the selection committee should be “composed of an odd number of representatives to prevent deadlock.”²⁰⁷ As part of the Commission’s oversight of the selection committee, it proposed that the committee establish selection criteria based on the functions of the Band Manager.²⁰⁸

51. Public safety entities overwhelmingly support the idea of the selection committee being comprised solely or mostly of public safety representatives.²⁰⁹ For instance, Cal OES “urges the Commission to limit the selection committee to representatives from incumbent public safety licensees as those users will be most impacted by changes to the band’s composition.”²¹⁰ Similarly, IAFC states that “the selection committee should have a clear majority of public safety representatives, who have experience in use of new public safety technologies on the nation’s incident scenes.”²¹¹ Other commenters state that the selection committee should be comprised of diverse, key stakeholders, including non-public safety entities such as electric companies or other critical infrastructure entities.²¹² Commenters further submitted a variety of perspectives on the applicability of the Federal Advisory Committee Act²¹³ and what actions, if any, the Commission should take to comply with that Act.²¹⁴

²⁰⁵ *Seventh Report and Order*, 38 FCC Rcd at 712, para. 21; *Ninth Further Notice*, 38 FCC Rcd at 745–47, paras. 135–42.

²⁰⁶ *Ninth Further Notice*, 38 FCC Rcd at 745–46, para. 136.

²⁰⁷ *Id.* at 746, para. 137.

²⁰⁸ *Id.* at 747, para. 141.

²⁰⁹ APCO Apr. 13, 2023, Comments at 22 (stating that “[i]f the Commission concludes that non-public safety entities should be represented, the public safety members of the committee should comprise a supermajority”); IAFC Apr. 13, 2023, Comments at 2 (stating “the selection committee should have a clear majority of public safety representatives, who have experience in use of new public safety technologies on the nation’s incident scenes”); Maryland Apr. 13, 2023, Comments at 2 (stating the selection committee should be “heavily weighted” with public safety representatives “to ensure that public safety’s needs and concerns are adequately considered in the selection of the Band Manager”); AASHTO May 15, 2023, Reply at 2–3 (stating it favors a “majority or exclusive public safety participation in the Band Manager or the Selection Committee”); Cal OES May 15, 2023, Reply at 6 (urging “the Commission to limit the selection committee to representatives from incumbent public safety licensees”); Major Cities May 15, 2023, Reply at 2 (stating it supports “a public safety majority representing incumbent users on the band manager selection committee”); MTA May 15, 2023, Reply at 6 (stating it believes “the majority of the [Selection] Committee [should be] comprised of public safety members”).

²¹⁰ Cal OES May 15, 2023, Reply at 6.

²¹¹ IAFC Apr. 13, 2023, Comments at 2.

²¹² iCERT Apr. 10, 2023, Comments at 5–6; UTC Apr. 13, 2023, Comments at 13; *see also* EEI May 15, 2023, Reply at 7 (citing iCERT Apr. 10, 2023, Comments); TDD May 15, 2023, Reply at 5 (citing iCERT Apr. 10, 2023, Comments).

²¹³ 5 U.S.C. Ch.10 (“FACA”).

²¹⁴ CERC argues that the implementation of a selection committee like the one proposed by PSSA would be subject to the Federal Advisory Commission Act (FACA). *See* CERC May 10, 2024, *Ex Parte* at 7–8 (citing PSSA Apr. 24, 2024, *Ex Parte* at 3) (“the selection committee should be comprised of seven current or former first responder
(continued....)

52. Because our decision today is geared towards maintaining the public safety nature of the band, we give deference to the views expressed by that community. We conclude, however, that it is unnecessary to resolve the issues raised in the comments at this time. Instead, we delegate broad authority to the Bureaus to establish the procedures by which a selection committee will be chosen, identify representatives to sit on the selection committee, determine the requisite number of selection committee members, identify the applicable selection criteria, and establish the appropriate procedures and appropriate oversight for the selection process as part of choosing the Band Manager.²¹⁵ We instruct the Bureaus to consider the record in this proceeding in exercising their delegated authority.

E. 4.9 GHz Band Freeze

53. Under the current freeze on applications for new licenses in the 4.9 GHz band, no new licensees may enter the band, but incumbents may file to modify their licenses or to license new sites in a fixed system.²¹⁶ In the *Ninth Further Notice*, the Commission sought comment on whether to lift the freeze.²¹⁷ APCO requests the Commission fully lift the freeze “[a]s soon as licensees populate ULS with detailed information about their operations[.]”²¹⁸ PSSA, on the other hand, requests the Commission “reinstitute the freeze on new entrants into the band and preserve access to the band for those licensees that are actually using the band.”²¹⁹ We note that a freeze on new entrants has been in effect since 2020.²²⁰ We also continue to believe that issuing licenses to new entrants before the Commission has collected granular data from incumbent licensees would further complicate the spectrum environment and undermine the Band Manager’s flexibility to provide for efficient use of this spectrum.²²¹

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stakeholders that represent the public safety community, including the FOP, IACP, IAFF, NOBLE and IAFC”); CERCJ Jul. 10, 2024, *Ex Parte* at 8–9. *But see* NREMT May 30, 2024, *Ex Parte* at 4–5; AT&T Jun. 20, 2024, *Ex Parte* at 8–10.

²¹⁵ *Seventh Report and Order*, 38 FCC Rcd at 712–13, para. 22 (“We delegate to the Bureaus the authority to manage the process of determining the selection committee’s responsibilities, including by issuing public notices as necessary to obtain additional comment to address questions regarding the selection committee.”). We also note that today’s decision does not address funding of the Band Manager. *See Ninth Further Notice*, 38 FCC Rcd 743–44, paras. 124–29 (seeking comment on Band Manager funding). In addition, we delegate to the Bureaus the authority to manage the process of determining the appropriate Band Manager funding mechanism(s), including by issuing public notices as necessary to obtain additional comment to address questions pertaining to funding.

²¹⁶ *2021 Order on Reconsideration*, 36 FCC Rcd at 15042, paras. 25–26; *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Modify Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940–4990 MHz Band*, WP Docket No. 07-100, Public Notice, 36 FCC Rcd 15185 (PSHSB/WTB 2021) (*Freeze Modification Public Notice*).

²¹⁷ *Ninth Further Notice*, 38 FCC Rcd at 748, para. 149.

²¹⁸ APCO Apr. 13, 2023, Comments at 22 (stating “[a]s soon as licensees populate ULS with detailed information about their operations, the Commission should fully lift the freeze and require all new and modified operations to undergo public safety frequency coordination”); *see also Seventh Report and Order*, 38 FCC Rcd at 717–18, paras. 33–34.

²¹⁹ PSSA Apr. 24, 2024, *Ex Parte* at 4; NREMT May 30, 2024, *Ex Parte* at 3. *But see* CERCJ Jul. 10, 2024, *Ex Parte* at 9–10.

²²⁰ *See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940–4990 MHz Band*, WP Docket No. 07-100, Public Notice, 35 FCC Rcd 9522, 9523 (PSHSB/WTB 2020) (*Freeze Public Notice*); *see also generally* CERCJ May 10, 2024, *Ex Parte* at 4–5 (discussing the freeze on new entrants into the band).

²²¹ *See Seventh Report and Order*, 38 FCC Rcd at 717, para. 33. The Commission directed the Bureaus to announce by public notice when ULS is prepared to accept the more granular data on public safety operations in the 4.9 GHz band. *Id.* at 717, para. 34.

54. While this process is ongoing, we find that freezing expansions, additions to, or modification of other technical parameters applicable to incumbent licensees is also necessary in light of our decision here to enable expanded public safety access to the band through the Band Manager's nationwide overlay license and sharing agreement with FirstNet. We are cognizant that some incumbent licensees, in reliance on the existing state of the freeze prior to today's decision, may have invested in systems that they hoped to use to modify or expand current operations.²²² However, we believe that a stable spectrum landscape reflecting the current state of operations in the band will better facilitate analysis of the upcoming granular data collection of licensed operations by the Commission, the Band Manager, and other interested parties. We also remind applicants and current licensees facing special circumstances that they may seek a waiver of the freeze pursuant to section 1.925 of the Commission's rules.²²³

55. Accordingly, until further notice, we retain the freeze for all applicants who are not already 4.9 GHz licensees, and we reinstate the freeze as it applies to incumbent licensees that was lifted pursuant to the *2021 Order on Reconsideration* and the *Freeze Modification Public Notice*.²²⁴ Specifically, we reinstate the freeze that was lifted on incumbents adding new licenses or modifying existing licenses unless otherwise excepted,²²⁵ and unless incumbents are filing certain types of applications to comply with the granular data collection. We direct the Bureaus to implement this change to the freeze via public notice within 30 days of the adoption of this order. The Bureaus will retain jurisdiction to manage and implement the freeze in the future, and we clarify that this freeze shall not apply to any necessary filings associated with issuance of the Band Manager's nationwide overlay license.²²⁶

F. Future Licensing of the Band

56. In the *Seventh Report and Order* the Commission adopted its proposal to collect additional technical data on public safety operations stating that the submission of this data will improve interference protection and give public safety licensees more confidence in the band.²²⁷ The Commission also determined it would require incumbent licensees to supply complete microwave path data for fixed links, and to obtain a license for base stations (currently authorized under the geographic license scheme) on a site-by-site basis.²²⁸ The Bureaus will issue a Public Notice that will give incumbent licensees 6 months to make the appropriate filings in our Universal Licensing System.²²⁹ In connection with this decision, the Commission sought comment in the *Ninth Further Notice* on whether incumbent licensees should be allowed to retain their geographic-area licenses after they have been issued site-based licenses.²³⁰ PSSA recommends that the Commission convert all current public safety geographic-area

²²² See CERC I May 10, 2024, *Ex Parte* at 4–5.

²²³ 47 CFR § 1.925.

²²⁴ *Seventh Report and Order*, 38 FCC Rcd at 731, para. 70.

²²⁵ *2021 Order on Reconsideration*, 36 FCC Rcd at 15042, paras. 25–26; *Freeze Public Notice*, 35 FCC Rcd at 9522–23 (listing “affected applications” subject to the freeze and “excepted applications” not subject to the freeze).

²²⁶ Commission action on the freeze at this time is not intended to affect the authority that the Bureaus have to implement this or other band freezes, as appropriate.

²²⁷ *Seventh Report and Order*, 38 FCC Rcd at 716–18, paras. 30–35.

²²⁸ *Id.* at 717, para. 34.

²²⁹ *Id.*

²³⁰ *Ninth Further Notice*, 38 FCC Rcd at 742, paras. 117–18.

licenses to site-based authorizations “to protect existing point-to-point and geographic licenses.”²³¹ APCO, on the other hand, supports retaining some element of the geographic-area license.²³²

57. The Commission also sought general comment on the future licensing of the band, noting our decision in the *Seventh Report and Order* to adopt a Band Manager regime and taking into consideration the questions regarding implementation.²³³ Commenters were generally divided on this issue. For example, AT&T proposes that the Commission should adopt license conditions for existing licenses in the band that require licensees to share any 4.9 GHz spectrum that is not in use with FirstNet.²³⁴ Similarly, PSSA requests that the Commission require incumbent licensees to surrender any 4.9 GHz spectrum that they are not using.²³⁵ In response, CERCi argues that PSSA’s proposal would “strip today’s 4.9 GHz public safety licensees’ right to expand their systems by forcing ‘incumbent licensees to surrender spectrum they are not using.’”²³⁶ Additionally, CERCi contends that PSSA’s proposal “would disrupt the serious reliance interests of existing state and local 4.9 GHz public-safety licensees.”²³⁷

58. We note that geographic licenses permit the licensee to use any channel in the band,²³⁸ while site-based licenses are frequency-specific.²³⁹ The results of the collection of granular technical data that the Commission initiated in the *Seventh Report and Order* will require the incumbent licensees to complete a thorough review of their current operations under their active PA licenses.²⁴⁰ The incumbents will then use ULS to create new licenses (with granular data) in newly created radio service codes PB (public safety licensees performing base/mobile, mobile-only or temporary fixed operations) and PF (public safety licensees operating fixed links).²⁴¹ We find that the incumbent licensees’ current PA licenses will be cancelled once the incumbents apply for and are authorized under the newly created radio service codes. We remind incumbents that this decision to cancel the former licenses once the new licenses have been created does not modify or alter incumbents’ rights to operate their existing networks. Instead, we believe that this decision aligns with the intent of our decision in the *Seventh Report and Order* to collect more granular data such that it will “improve interference mitigation efforts and bolster

²³¹ PSSA Apr. 12, 2023, Comments at 5, 16–17. *But see* iCERT May 11, 2023, Reply at 8 (explaining that it opposes PSSA’s proposal as it “would effectively foreclose any local use of the 4.9 GHz band by public safety entities (and critical infrastructure as well)”).

²³² APCO Apr. 13, 2023, Comments at 19–20 (stating it supports “retaining some element of geographic area licensing to accommodate public safety operations that are not well-suited for site-based licensing (e.g., vehicular local area networks)”).

²³³ *Ninth Further Notice*, 38 FCC Rcd at 748, para. 148.

²³⁴ AT&T Jun. 20, 2024, *Ex Parte* at 5.

²³⁵ PSSA Apr. 24, 2024, *Ex Parte* at 4.

²³⁶ CERCi May 10, 2024, *Ex Parte* at 2 (citing PSSA Apr. 23, 2024, *Ex Parte* at 4) (“The PSSA cannot claim to serve existing licensees’ interests by taking away their rights to grow their capabilities by serving more public-safety users, covering more areas, and/or increasing capacity.”).

²³⁷ *Id.* at 4 (“In reliance on the Commission’s existing policies, these entities may have invested in fixed and mobile systems that they hoped to modify or expand as they secured additional funding or gained additional experience in operating within the 4.9 GHz band . . . [c]hanging the public-safety landscape can strand investment, upend strategic planning, and impose operational and legal uncertainties on state and local governments.”).

²³⁸ 47 CFR § 90.1207(a).

²³⁹ *Id.* § 90.1207(e)(1)–(2).

²⁴⁰ *Seventh Report and Order*, 38 FCC Rcd at 716–18, paras. 30–35.

²⁴¹ *Id.* at 716–18, paras. 30–35.

public safety confidence in the band”²⁴² and is the best approach to ensure that ULS does not contain duplicative or inaccurate licenses once the incumbents have received their new radio service codes.

59. We likewise believe that the collection of this granular technical data will help the Band Manager identify specific frequency usage across all deployments in the band,²⁴³ and thus potentially unused channels within areas covered by certain geographic licenses. While PSSA’s and AT&T’s proposals to require that incumbent licensees surrender to the Band Manager or share with FirstNet any unused spectrum could potentially make more spectrum available to FirstNet and increase overall spectrum efficiency in the band, we defer any consideration of those proposals until after the Commission has completed its collection and analysis of granular technical data on incumbent licensed public safety operations in the band.²⁴⁴

IV. PROCEDURAL MATTERS

60. *Paperwork Reduction Act Analysis.* This *Eighth Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

61. In this present document, we have assessed the effects of our creation of a new Band Manager overlay license, and find that it will have a small impact on small governmental entities which are currently 4.9 GHz licensees, mainly related to the collection of data about existing 4.9 GHz deployments.

62. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA)²⁴⁵ 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.”²⁴⁶ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Eighth Report and Order* on small entities. The FRFA is set forth in Appendix B.

63. *Congressional Review Act.* The Commission will submit this draft *Eighth Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Eighth Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

²⁴² *Seventh Report and Order*, 38 FCC Rcd at 716, paras. 30.

²⁴³ In particular, the Commission required incumbent licensees to supply complete microwave path data for fixed links, and required incumbent licenses to obtain site-by-site licenses, which includes, *inter alia*, frequency and bandwidth information, for stations currently authorized under the geographic license scheme. *Seventh Report and Order*, 38 FCC Rcd at 717–18, para. 34; see 47 CFR § 90.1207(e)(1)–(2).

²⁴⁴ We likewise defer any consideration of CERC’s arguments as it pertains to PSSA’s proposal that the Commission require incumbent licensees surrender unused spectrum. See generally CERC May 10, 2024, *Ex Parte* at 4–5.

²⁴⁵ 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).

²⁴⁶ 5 U.S.C. § 605(b).

64. *Ex Parte Presentations.* The proceeding 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). 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.

65. *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 FCC’s Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

66. *Additional Information.* For additional information on this proceeding, contact Paul Powell of the Wireless Telecommunications Bureau, Mobility Division, at 202-418-1613 or Paul.Powell@fcc.gov, or Brian Marengo of the Public Safety and Homeland Security Bureau at 202-418-0838 or Brian.Marengo@fcc.gov.

V. ORDERING CLAUSES

67. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 4(i), 4(j), 302, 303(b), 303(f), 303(g), 303(r), 309(j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 302a, 303(b), 303(f), 303(g), 303(r), 309(j), and 405, as well as section 1.429 of the Commission’s rules, 47 CFR § 1.429, that this *Eighth Report and Order* IS HEREBY ADOPTED.

68. IT IS FURTHER ORDERED that this *Eighth Report and Order* SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

69. IT IS FURTHER ORDERED that the Commission’s Office of the Secretary, SHALL SEND a copy of this *Eighth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

70. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Eighth 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 in the document above, the Federal Communications Commission amends 47 CFR parts 0 and 90 as follows:

Part 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(i), 155, 225, and 409, unless otherwise noted.

2. Section § 0.331 is amended by adding paragraph (h) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(h) The Chief of the Wireless Telecommunications Bureau is delegated authority jointly with the Chief of the Public Safety and Homeland Security Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Wireless Telecommunications Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Wireless Telecommunications Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

3. Section § 0.392 is amended by adding paragraph (k) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(k) The Chief of the Public Safety and Homeland Security Bureau is delegated authority jointly with the Chief of the Wireless Telecommunications Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

4. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

5. Section § 90.175 is amended by revising paragraph (g)(2) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(g) * * *

(1) * * *

(2) *For frequencies between 4940–4990 MHz:* A statement is required from the nationwide band manager recommending the most appropriate channel(s), bandwidth, operating power, and any other technical parameter which promotes robust and efficient use of the band while minimizing interference.

6. Section § 90.1203 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 90.1203 Eligibility.

* * * * *

(b) 4.9 GHz band licensees eligible pursuant to paragraph (a) may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this section. However, all applications in the band are limited to operations in support of public safety.

(c) The 4.9 GHz Band Manager is eligible to hold a nationwide overlay license in the 4940–4990 MHz band consistent with the requirements of § 90.1207(h) of this part.

7. Section § 90.1207 is amended by revising paragraphs (a), (b), (c), and (e) and adding paragraph (h) to read as follows:

§ 90.1207 Licensing.

(a) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) of this part gives the licensee authority to operate on any authorized channel in this band within its licensed area of operation. See § 90.1213. A 4940–4990 MHz band license will be issued for the geographic area encompassing the legal jurisdiction of the licensee or, in case of a nongovernmental organization, the legal jurisdiction of the state or local governmental entity supporting the nongovernmental organization.

(b) Subject to § 90.1209, a 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) of this part gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, except as follows:

(1)–(2) * * *

(c) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) of this part gives the licensee authority to operate base and mobile units (including portable and handheld units) and

operate temporary (1 year or less) fixed stations anywhere within the area authorized by the license. Such licensees may operate base and mobile units and/or temporary fixed stations outside their authorized area to assist public safety operations with the permission of the jurisdiction in which the radio station is to be operated. Base and temporary fixed stations are subject to the requirements of paragraph (b) of this section.

(d) * * *

(e) Applications for license in the 4940–4990 MHz band by an entity eligible under § 90.1203(a) of this part must include the following technical information.

(1)–(2) * * *

(f)–(g) * * *

(h) The 4.9 GHz Band Manager is eligible under § 90.1203(c) of this part to hold a nationwide overlay license for the 4940–4990 MHz band, subject to the exclusion of licensed geographic areas and frequencies held by an incumbent entity eligible under § 90.1203(a) of this part. The 4.9 GHz Band Manager:

(1) shall not be eligible to independently operate stations in the 4940–4990 MHz band;

(2) consistent with §§ 90.1217(a), (d) and 2.103(b), may allow the First Responder Network Authority, pursuant to a sharing agreement, to construct and operate stations at any geographic site within the Band Manager’s licensed area and on any channel for which the Band Manager is licensed, subject to the exclusions in § 90.1207(h) and provided such stations do not cause harmful interference to incumbent licensees and otherwise comply with Commission rules and coordination requirements;

(3) shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau prior to entering into any sharing agreement with the First Responder Network Authority that such agreement meets the requirements of §§ 2.103(b) and 90.1207(h);

(4) shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau when stations have been placed in operation pursuant to § 90.1209(e); and

(5) shall ensure that stations operating pursuant to a sharing agreement in this subpart comply with the relevant technical and licensing rules governing operations in the 4940–4990 MHz band in §§ 90.1205, 90.1209(b)–(c), (e), 90.1213, and 90.1215.

8. Section § 90.1209 is amended by revising paragraphs (a) and (d) and adding paragraph (e) to read as follows:

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

(a) Channels in this band licensed to any entity eligible under § 90.1203(a) are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b)–(c) * * *

(d) Stations used by an entity eligible under § 90.1203(a) of this part must be placed into operation within twelve (12) months from the date of grant in accordance with § 90.155. Licensees of temporary fixed stations must place at least one such station in operation within twelve months of license grant.

(e) Stations used by an entity eligible under § 90.1203(h) of this part must be placed into operation within twelve (12) months from the date that the Band Manager and the First Responder Network Authority execute a sharing agreement pursuant to §§ 90.1207(h) and 2.103(b) of this chapter.

9. Section § 90.1217 is amended by revising the introductory text and paragraphs (a) and (b) and adding paragraphs (d) and (e) to read as follows:

§ 90.1217 4.9 GHz Band Manager.

The 4.9 GHz Band Manager will have the following primary responsibilities:

(a) Frequency coordination and interference protection for 4.9 GHz band incumbent public safety operations;

(b) Incentivizing the use of the latest commercially available technologies, including 5G;

(c) * * *

(d) Managing a sharing agreement with the First Responders Network Authority pursuant to §§ 90.1207(h) and 2.103(b) of this chapter; and

(e) Filing an annual report with the Commission.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Eighth Further Notice of Proposed Rulemaking (Eighth Further Notice)* released in October 2021,² and *Ninth Further Notice of Proposed Rulemaking (Ninth Further Notice)* released in January 2023.³ The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Eighth* and *Ninth Further Notices*, including comment on the IRFA. 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 *Eighth Report and Order*, the Commission seeks to meet its objectives of ensuring efficient and effective utilization of the 4940–4990 MHz band (4.9 GHz band) in support of public safety missions nationwide. To achieve these objectives, the *Eighth Report and Order* bolsters the coordinated nationwide approach to the band that the Commission established in its *Seventh Report and Order*, in which it adopted a nationwide Band Manager framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals and to ensure efficient use of the 4.9 GHz band nationwide, the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that fully protects incumbent operations. In addition to expanding the Band Manager’s responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, the adopted rules in the *Eighth Report and Order* also reaffirm the Commission’s commitment to the nationwide Band Manager framework and clarify the Band Manager’s responsibilities.

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.

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

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 *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, 36 FCC Rcd 15032 (2021) (*2021 Order on Reconsideration or Eighth Further Notice*); see also *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Erratum (2021).

³ *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, 38 FCC Rcd 704 (2023) (*Seventh Report and Order or Ninth Further Notice*); see also *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Erratum (2023).

⁴ 5 U.S.C. § 604.

proposed rules as a result of those comments.⁵ The Chief Counsel did not file any comments in response to the proposed rules or policies 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.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ 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.⁹

6. *Small Businesses, Small Organizations, Small Government Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry specific size standards for businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹²

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2022, there

⁵ *Id.* § 604(a)(3).

⁶ *Id.* § 604(a)(4).

⁷ *Id.* § 601(6).

⁸ *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.”

⁹ 15 U.S.C. § 632.

¹⁰ *See* 5 U.S.C. § 601(3)–(6).

¹¹ *See* SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹² *Id.*

¹³ *See* 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

were approximately 530,109 small exempt organizations in the U.S. reporting revenue of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁵

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2022 Census of Governments¹⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number, there were 36,845 general purpose governments (county,¹⁹ municipal, and town or township²⁰) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²¹) with enrollment populations of less than 50,000.²² Accordingly, based on the 2022 U.S. Census of Government data, we estimate that at least 48,724 entities fall into the category of “small government jurisdictions.”²³

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁶ See 5 U.S.C. § 601(5).

¹⁷ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁸ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²² While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments— independent school districts with enrollment populations of less than 50,000 (11,879)—from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

9. *Frequency Coordinators.* Frequency coordinators are entities or organizations certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio (PLMR) Services that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to spectrum frequency coordinators. Business Associations,²⁴ which comprises establishments primarily engaged in promoting the business interests of their members, is the closest applicable industry with a SBA small business size standard.²⁵

10. The SBA small business size standard for Business Associations classifies firms with annual receipts of \$8 million or less as small.²⁶ For this industry, U.S. Census Bureau data for 2017 show that there were 14,540 firms that operated for the entire year.²⁷ Of these firms, 11,215 had revenue of less than \$5 million.²⁸ Based on this data, the majority of firms in the Business Associations industry can be considered small. However, the Business Associations industry is very broad and does not include specific figures for firms that are engaged in frequency coordination. Thus, the Commission is unable to ascertain exactly how many of the frequency coordinators are classified as small entities under the SBA size standard. According to Commission data, there are 13 entities certified to perform frequency coordination functions under part 90 of the Commission's rules.²⁹ For purposes of this FRFA, the Commission estimates that a majority of the 13 FCC-certified frequency coordinators are small.

11. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except Satellite*)³⁰ which encompasses business entities engaged in radiotelephone communications, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³¹ U.S. Census

²⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "813910 Business Associations," <https://www.census.gov/naics/?input=813910&year=2017&details=813910>.

²⁵ See 13 CFR § 121.201, NAICS Code 813910.

²⁶ *Id.*

²⁷ 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 813910, <https://data.census.gov/cedsci/table?y=2017&n=813910&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁹ The Commission's records indicate that there are currently 13 frequency coordinators that would be affected by this rulemaking. See <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/industrial-business/industrial-business-licensing#frequency-coordinators>.

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³² Of this number, 2,837 firms employed fewer than 250 employees.³³ Thus, under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

12. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses.³⁴ Active PLMR licenses include 3,577 licenses in the 4.9 GHz band;³⁵ 19,011 licenses in the 800 MHz band;³⁶ and 2,716 licenses in the 900 MHz band.³⁷ Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

13. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.³⁸ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.³⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.⁴⁰ U.S. Census Bureau data for 2017 show that there were 656

³² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³³ *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.

³⁴ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GJ, GO, GP, GU, IG, IQ, PA, PW, QM, QQ, RS, SG, SL, SP, SY, YB, YE, YF, YG, YI, YJ, YO, YP, YU, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³⁵ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³⁷ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GI, GR, GU, YD, YS, YU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³⁸ See U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

³⁹ *Id.*

⁴⁰ See 13 CFR § 121.201, NAICS Code 334220.

firms in this industry that operated for the entire year.⁴¹ Of this number, 624 firms had fewer than 250 employees.⁴² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁴³ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁴⁴ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁴⁶ Of that number, 2,837 firms employed fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.⁴⁸ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

15. The Commission anticipates that the rule changes adopted in the *Eighth Report and Order* will create *de minimis* new compliance requirements for small entities. The adopted rules will cause the 4.9 GHz Band Manager, once selected, to become eligible to apply for a nationwide overlay license and will authorize the Band Manager to enter into a sharing agreement with FirstNet. Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its NPSBN. Once selected, the Band Manager's primary responsibilities will include: (1) frequency coordination and interference protection for incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivization of the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. The Commission notes that the rules adopted in the *Eighth Report and Order* do not create any significant additional compliance requirements for small entities. However, in assessing the

⁴¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴³ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁴ *Id.*

⁴⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁹ *Id.*

cost of compliance for small entities, at this time the Commission is not in a position to determine whether these actions will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the rule changes that were adopted. Nevertheless, the Commission believes the benefits gained from the adopted rules by 4.9 GHz licensees and more optimized use of the band outweigh potential compliance costs incurred.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

16. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”⁵⁰

17. In the *Eighth Report and Order*, the Commission adopts measures to further promote use of the 4.9 GHz band for a variety of primary public safety operations. In doing so, it makes the 4.9 GHz Band Manager eligible to apply for a nationwide overlay license and authorizes the Band Manager to enter into a sharing agreement with FirstNet to enable use of the 4.9 GHz band as part of its NPSBN in a manner that fully protects incumbent operations. In this context, the Band Manager will be required to work with public safety licensees to rationalize their use. The Commission’s actions do not alter any of the actions that the Commission adopted in the *Seventh Report and Order* as they pertain to requiring small and other public safety incumbents and future applicants for the 4.9 GHz band to submit data on FCC Form 601. As we noted in the *Seventh Report and Order*, collecting the additional technical data on public safety operations will benefit public safety licensees operating in the band because it will improve interference protection and give public safety licensees more confidence in the band without adding a significant economic or administrative burden on licensees or applicants to submit the data. The Commission considered alternative approaches, however, the record reflects support from commenters, some of which include or represent small entities, that agree our adopted approach in the *Eighth Report and Order* could have the effect of increasing band usage for first responders and other public safety missions, while preserving incumbent operations.⁵¹

18. While small and other public safety applicants seeking to license facilities in the 4.9 GHz band will be subject to formal frequency coordination procedures, the economic impact will be minimized through the *Eighth Report and Order*’s adoption of a frequency coordination process with which public safety licensees operating PLMR facilities in other frequency bands are familiar. Once in place, the formal frequency coordination process will ensure the efficient assignment and use of spectrum while minimizing interference to incumbents. Consequently, the frequency coordination process will improve interference protection and give public safety licensees more confidence in the band without adding a significant economic burden on applicants.

19. Finally, all other Commission actions related to the Band Manager in the *Eighth Report and Order*, such as the Band Manager’s responsibility to identify unused spectrum access opportunities, do not create a significant economic impact on small entities.

G. Report to Congress

20. The Commission will send a copy of the *Eighth Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁵² In addition, the Commission will send a copy of the *Eighth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of

⁵⁰ 5 U.S.C. § 604(a)(6).

⁵¹ See *Eighth Report and Order*, para. 22.

⁵² 5 U.S.C. § 801(a)(1)(A).

the SBA. A copy of the *Eighth Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.⁵³

⁵³ *Id.* § 604(b).

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

In the Matter of	)	
	)	
Comparative Consideration of Three Groups of	)	NCE MX Group Numbers 93, 95, and 200
Mutually Exclusive Applications for Permits to	)	
Construct New Noncommercial Educational FM	)	
Stations	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 28, 2024

Released: October 28, 2024

By the Commission: Commissioner Gomez not participating.

I. INTRODUCTION

1. The Commission has before it for comparative consideration and review three groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.¹ By this Memorandum Opinion and Order (Order), we use a point system to tentatively select new applications for grant in NCE MX Groups 93 and 95 and affirm the grant of the initial tentative selectee in NCE MX Group 200. Petitions to deny the applications of the new tentative selectees must be filed within 30 days of the date of release of this Order.²

2. The Commission previously resolved the conflicting NCE proposals in NCE MX Groups 93, 95, and 200 by applying the comparative procedures codified in Part 73, Subpart K, of the Commission's rules (rules)³ and tentatively selected applications for grant. These actions now require additional analysis as a result of subsequent challenges and developments.

II. BACKGROUND

3. The NCE MX Groups 93, 95, and 200 applications were filed in November 2021, during the most recent filing window for new NCE FM applications.⁴ The applicants had an opportunity to enter into settlement agreements to resolve mutual exclusivity.⁵ The Commission subsequently resolved NCE

¹ On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, Public Notice, 36 FCC Rcd 16452 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). NCE MX Groups 93, 95, and 200 were included in the *NCE MX Public Notice*.

² *See* 47 CFR § 73.7004(b).

³ 47 CFR §§ 73.7000 – 73.7005.

⁴ *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. *See* 47 CFR § 73.501.

⁵ *See NCE MX Public Notice*, 34 FCC Rcd at 16452. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

MX Groups 93, 95, and 200⁶ by applying the NCE comparative procedures, which include (1) threshold fair distribution criteria for applications proposing to serve different communities,⁷ (2) an NCE point system,⁸ which is a simplified, “paper hearing” process for selecting among mutually exclusive NCE applications,⁹ and (3) a tie-breaker determination if more than one MX application receives the same number of points.¹⁰ The Commission’s comparative review of MX applications is based on applicant-provided information. To expedite the licensing of new NCE FM stations, the Bureau and the Commission rely on applicant certifications and documentation and generally do not independently confirm their accuracy during the review process. Rather, the Bureau and the Commission rely on the petition to deny process to verify the accuracy of the points claimed and certifications.¹¹

4. After applying these procedures, the Commission tentatively selected applications for grant from NCE MX Groups 93, 95, and 200 and initiated a 30-day period for filing petitions to deny against the applicants tentatively selected.¹² In this Order, we address (1) a petition to deny and an informal objection challenging our tie-breaker analysis in NCE MX Group 93,¹³ and (2) an application for review¹⁴ challenging the best technical proposal analysis in NCE MX Group 200. We also re-analyze NCE MX Group 95 as a result of the recent withdrawal of the tentative selectee application.¹⁵

⁶ Conflicting NCE applications, which cannot all be granted consistent with the Commission’s technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

⁷ See 47 U.S.C. § 307(b); 47 CFR § 73.7002(a). An NCE FM applicant is eligible to receive a fair distribution preference if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station’s service area, provided that the population served is at least 2,000 people.

⁸ See 47 CFR § 73.7003 (point system selection procedures). The NCE point system awards a maximum of seven merit points, based on four distinct criteria: (1) established local applicant; (2) local diversity of ownership; (3) state-wide network; and (4) best technical proposal in the MX group.

⁹ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order*), clarified, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), recon. denied, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order*) (amending the comparative rules and procedures), *aff’d*, Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*).

¹⁰ See 47 CFR § 73.7003(c).

¹¹ See *2001 NCE MO&O*, 16 FCC Rcd at 5104, para. 87.

¹² See 47 CFR § 73.7004(b).

¹³ Because the challenges could alter the outcome of NCE MX Group 93, the Bureau referred this group to the Commission. Specifically, the Commission directed the Bureau to refer issues where the exclusion or inclusion of challenged or claimed points could alter the outcome of a particular NCE MX group, or where a new or novel question exists. See, e.g., *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 9869, para. 87 (Aug. 2, 2022) (*First Comparative Order*) (standards for staff evaluation of petitions).

¹⁴ See *infra* n. 92.

¹⁵ On July 6, 2024, World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation), the tentative selectee in NCE MX Group 95, withdrew its application. See Application File No. 0000167179. See also *NCE MX Group 95*, Letter Order, DA 22-749 (MB July 12, 2022) (identifying World Federation as the tentative selectee in NCE MX Group 95).

III. DISCUSSION

A. NCE MX Group 93

5. Background. This group consists of four applications proposing service to different communities in Wisconsin: Optima Enrichment, Inc. (OEI) proposes to serve Delafield; Waterloo Christian Radio Corporation (WCRC) proposes to serve Ixonia; The Family Radio Network, Inc. (FRN) proposes to serve Jackson; and Community Public Radio, Inc. (CPR) proposes to serve Waukesha.¹⁶ In the First Comparative Order, the Commission determined that OEI, WCRC, and CPR had comparable fair distribution of service claims,¹⁷ and therefore, analyzed the three applications under the point system.¹⁸

6. The Commission awarded five points to OEI and WCRC and two points to CPR.¹⁹ Accordingly, only OEI and WCRC proceeded to the tie-breaker analysis.²⁰ Because OEI and WCRC remained tied after the second tie-breaker,²¹ the Commission analyzed the applications under the third and final tie-breaker – prior NCE applications.²²

7. Pursuant to this third and final tie-breaker criterion, the tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.²³

¹⁶ See Application File Nos. 0000167847 (OEI Application), 0000167128 (WCRC Application), 0000167074 (FRN Application), and 0000166752 (CPR Application).

¹⁷ CPR claims it will provide second NCE service to 32,857 people; OEI to 37,827 people; and WCRC to 37,998 people. See *First Comparative Order*, *supra* note 13, at para. 49. In the *First Comparative Order*, the Commission also eliminated FRN because it did not claim a fair distribution preference. *Id.* We note that on December 27, 2023, WCRC amended its application to modify its antenna and reduce its proposed coverage area. See Application File No. 0000167128 (WCRC Amendment). In the WCRC Amendment, WCRC specified that it will now provide second NCE service to 37,971 people. See WCRC Amendment at “Exhibits for 766001 amendment.pdf”. This change does not affect the Commission’s fair distribution analysis. The CPR, OEI, and WCRC proposals are still comparable because no proposal exceeds the next best proposal by at least 5,000 people.

¹⁸ *Id.* at paras. 50-51.

¹⁹ *Id.* at para. 50. OEI and WCRC each received three points as an established local applicant and two points for diversity of ownership. CPR received two points for diversity of ownership. We note that as a result of WCRC’s December 27, 2023, Amendment, and WCRC’s reduced proposed area and population, CPR will now serve at least 10% more area and population than WCRC’s next best proposal. CPR, therefore, receives one additional point for the best technical proposal and a total of three points. This change, however, does not alter the ultimate outcome of the point analysis. WCRC and OEI still remain tied with the most points and proceed to the tie-breaker analysis.

²⁰ Although CPR did not proceed to the tie-breaker analysis, the CPR Application is still pending. The CPR Application will ultimately be dismissed upon grant of the tentative selectee application(s) in NCE MX Group 93.

²¹ With regard to applications for NCE radio facilities, the applicant with the fewest existing radio authorizations (licenses and construction permits, commercial and NCE) prevails on the first tie-breaker. The applicant with the fewest pending new and major change radio applications prevails on the second tie-breaker. See 47 CFR § 73.7003(c)(1),(2).

²² See 47 CFR § 73.7003(c)(3).

²³ *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

8. OEI certified that it satisfies the third tie-breaker criterion; WCRC did not.²⁴ Accordingly, the Commission identified OEI as the tentative selectee in Group 93, accepted the application for filing, and established a 30-day period for filing petitions to deny.²⁵

9. WCRC filed a Petition to Deny the OEI application,²⁶ and REC Networks (REC) filed an Informal Objection to the OEI application.²⁷ WCRC argues that the OEI Application should be denied because (1) the dismissal of the “mutually exclusive inappropriate application” of CPR, due to CPR’s relationship with Truth Media, Inc., would create a scenario for WCRC to earn two points for the best technical proposal and become the tentative selectee;²⁸ and (2) OEI is not entitled to the third tie-breaker preference because it did not timely support its claim and “the application on which it relies for this benefit was not dismissed under the comparative points criterion,” but rather as a result of its inferior proposal under the fair distribution of service criterion.²⁹ In its Objection, REC similarly argues that OEI is not eligible to claim a third tie-breaker preference because OEI was granted “two construction permits from the 2007 NCE FM filing window, of which, one was voluntarily assigned and the other was cancelled.”³⁰ Further, although REC “takes no position on any alleged relationship between CPR and Truth Media,”³¹ it urges the Commission to address the issues raised against CPR because “a decision on that aspect of the MX Group can actually have a serious impact on the overall outcome of the MX Group.”³²

10. In its Opposition, OEI asserts that the WCRC Petition is a “late-filed effort to object to the inclusion of CPR in MX Group 93 and improperly raises arguments against the non-tentative

²⁴ *First Comparative Order* at para. 51. In the *First Comparative Order*, the Commission found that OEI sufficiently demonstrated that: (1) it applied for an NCE FM station in the October 2007 NCE FM filing window, but had its application dismissed in favor of an applicant with superior points or a tie-breaker showing (*see* File No. BNPED-20071022AFG); (2) it has remained in continuous existence as a legal entity since the October 2007 NCE filing window; and (3) it does not hold any NCE construction permit or license. *Id.*

²⁵ *Id.* at paras. 51, 102.

²⁶ Pleading File No. 0000199133 (filed September 1, 2022) (WCRC Petition). On September 15, 2022, OEI filed an Opposition to the WCRC Petition. *See* Pleading File No. 0000199944 (OEI Opposition). WCRC filed a Reply on September 27, 2022. *See* Pleading File No. 0000200963 (WCRC Reply).

²⁷ Pleading File No. 0000200023 (filed September 18, 2022) (REC Objection).

²⁸ WCRC asserts that CPR filed 10 applications in the November 2021 NCE FM filing window, the maximum permitted, but in contravention of the Commission’s policy, CPR also has an interest in the three applications filed by Truth Media, Inc. (Truth Media). WCRC claims that the controlling parties of CPR are “close relatives” of the controlling parties of Truth Media and that CPR “substantially financed the preparation and prosecution of the [Truth Media] applications.” WCRC Petition at 3. Accordingly, WCRC argues that because CPR allegedly had attributable interests in more than 10 applications, the Commission should have dismissed the three applications with the highest file numbers, which includes CPR’s application for Waukesha, Wisconsin, in NCE MX Group 93. *Id.* at 5.

²⁹ WCRC Petition at 2, 6.

³⁰ REC Objection at 3. Accordingly to REC, OEI’s 2007 NCE FM application for Owen, Wisconsin, was granted as a singleton, but subsequently assigned to another party. *See* Application File Nos. BNPED-20071022ATV; BAPED-20080902ADR. REC also states that OEI was granted an NCE FM construction permit for Christiansted, US Virgin Islands, but subsequently surrendered the permit. *See* Application File No. BNPED-20071022AUJ. Because we find that OEI was not entitled to a third tie-breaker preference on other grounds, we do not address these specific allegations.

³¹ REC Objection at 4.

³² *Id.* at 3.

selectee.”³³ OEI also states that it properly and timely certified it satisfied the third tie-breaker criterion and that WCRC “twists logic in asserting that the Commission could not consider a prior NCE application dismissed pursuant to the Fair Distribution of Service Analysis as relevant to the third-level tie-breaker.”³⁴ Finally, in its Reply, WCRC states that it promptly and timely objected to the inclusion of the CPR Application in NCE MX Group 93 after it discovered CPR’s alleged relationship with Truth Media.³⁵ WCRC also reiterates its claim that OEI fails to satisfy the third tie-breaker criterion.³⁶

11. Discussion. CPR Application. Section 73.3584(a) of the Commission’s rules mandates that “[f]or mutually exclusive applications subject to selection by . . . fair distribution/point system (reserved channels), petitions to deny may only be filed against . . . the tentative selectee(s).”³⁷ OEI was the tentative selectee of MX Group 93; CPR was not. WCRC acknowledges that “the Commission prefers not to evaluate the characteristics of applicants that are not tentative selectees,”³⁸ but urges the Commission to consider its allegations that CPR has a relationship with Truth Media, another NCE FM applicant, and therefore violated the 10 application limit in the November 2021 NCE FM filing window.³⁹

12. The Commission has a policy of not evaluating the characteristics of non-selectees, such as CPR.⁴⁰ In this particular case, however, because WCRC’s allegations regarding CPR could affect and alter the outcome of the comparative analysis of NCE MX Group 93, we will consider WCRC’s claim that CPR had attributable interests in over 10 applications from the November 2021 NCE FM filing window.⁴¹

³³ OEI Opposition at 2. OEI asserts that any objection to the inclusion of the CPR Application should have been raised after the Bureau released its November 29, 2021, Public Notice, identifying the groups of MX applications.

³⁴ *Id.* at 4-5. In its Opposition, OEI also argues that the WCRC Petition is procedurally deficient and should be dismissed because it “did not contain allegations of fact supported by affidavit as required by the FCC’s rules.” *Id.* at 1. In Reply, WCRC asserts that because its Petition is “based on information that is publicly available on the FCC’s website . . . [t]here is no need for additional certification of evidence . . . [t]his material is perfectly eligible for administrative notice.” WCRC Reply at 2. We agree and take official notice of the facts set forth in the WCRC Petition. See 47 U.S.C. § 309(d)(1) (“Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”).

³⁵ WCRC Reply at 3-4.

³⁶ *Id.* at 6. WCRC highlights that section 73.7003(c)(3) of the Commission’s Rules provides for the third tie-breaker preference to be awarded to an applicant whose prior application was dismissed for earning fewer points than the tentative selectee, or for losing a tie-breaker, and notes that the application which OEI relies on was not eliminated for these reasons, but rather, during the threshold fair distribution of service comparison.

³⁷ 47 CFR § 73.3584(a); see also *Centro Familiar de Restauracion y Vida*, Letter Order, DA 22-771 (MB 2022) (reiterating that petitions to deny may not be filed against non-tentative selectees).

³⁸ WCRC Petition at 5.

³⁹ See *FCC Adopts 10-Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window*, Public Notice, MB Docket No. 20-343, 36 FCC Rcd 7754 (2021); 47 CFR § 73.503(g).

⁴⁰ When NCE FM applications are classified as mutually exclusive, the Bureau does not process and review each application for acceptability and grantability. Rather, the Bureau only reviews, accepts for filing, and processes the one application identified, after the comparative analysis, as the tentative selectee of the MX Group. See *Cultural Energy*, Letter Order, 26 FCC Rcd 12766, 12768 (MB 2011) (considering objections against non-tentative selectees wasteful and inefficient); see also *NCE Order on Reconsideration*, *supra* note 9 (reaffirming the Commission’s long standing one-grant policy and policy of reviewing and accepting for filing only the tentatively-selected application in each MX group).

⁴¹ In the *First Comparative Order*, the Commission explained that “an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee’s, would make its argument in a petition to deny.” *First Comparative Order* at para. 85. Here, WCRC argues that its own application would have received more points than the tentative selectee if the Commission had excluded the CPR Application from the comparative analysis.

13. WCRC's allegation that CPR exceeded the 10 application limit is based on its conclusion that CPR had an interest in the three NCE FM applications filed in the November 2021 NCE FM filing window by Truth Media. Specifically, WCRC concludes that because (1) the controlling parties of CPR are "close relatives" of Truth Media,⁴² (2) Truth Media "was apparently so thinly capitalized that it needed to rely on debt financing" from CPR,⁴³ and (3) CPR allegedly "funded the substantial portion, if not all, of [Truth's] expenses in filing and prosecuting applications in the filing window,"⁴⁴ the three Truth Media applications must be attributed to CPR.

14. We find that WCRC has failed to raise a substantial and material question of fact as to whether CPR had an attributable interest in the Truth Media NCE FM applications. WCRC's allegations are not based on concrete, specific facts, but rather, speculation and unfounded inferences.⁴⁵ Moreover, even if the controlling parties of CPR and Truth Media are "close relatives," the existence of a family relationship is not sufficient to create a presumption of common control or attribution.⁴⁶ Further, the fact that CPR may have financially assisted Truth Media does not cause us to infer, as WCRC urges, that CPR has an attributable interest in Truth Media.⁴⁷ The Commission has held where family members are involved, a petitioner attempting to raise a real party-in-interest or attribution issue has a heavy burden, given the typical financial ties between family members.⁴⁸ WCRC has not met this burden, and accordingly, we deny in part the WCRC Petition.

15. Third Tie-Breaker Criterion. The Commission utilized the recently-adopted third tie-breaker criterion for the first time ever to resolve the tie between OEI and WCRC and designate OEI the tentative selectee of NCE MX Group 93. To prevail under this new criterion, an applicant must timely demonstrate, inter alia, that it "applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a

⁴² WCRC Petition at 3.

⁴³ *Id.*

⁴⁴ *Id.* WCRC's allegation is based on an August 17, 2022, application to assign an NCE FM construction permit for Milledgeville, Georgia, Fac. ID 766434, from Truth Media to CPR, and that the Asset Purchase Agreement provided that "Consideration for the Assets shall be forgiveness of the total amount of money advanced to the Assignor for expenses incurred in the successful prosecution of the Construction Permit Application." *Id.* at 3, citing Application File No. 0000197819. We note that the Asset Purchase Agreement was subsequently amended to provide that "Consideration shall be Five Thousand Nine Hundred Fifty Dollars (\$5,950.00)." See Application File No. 0000197819, amended October 14, 2022.

⁴⁵ For example, WCRC's claim that Truth Media was "apparently so thinly capitalized that it needed to rely on debt financing" from CPR is not based on any concrete evidence. Allegations consisting merely of ultimate, conclusory facts or more general affidavits are not sufficient. See, e.g., *Gencom, Inc. v. FCC*, 832 F.2d 171, 180 n. 11 (D.C. Cir. 1987).

⁴⁶ See, e.g., *Petroleum v. Nasby Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3494, 3495 (1996) ("As we have long held, family relationship alone is insufficient to warrant an inference that family members are acting in concert."); *Pressly Enterprises, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 14079, 14087 (2002) ("existence of a familiar relationship is not sufficient by itself to cause each affected family member to have an attributable interest in the media holdings of his or her relatives").

⁴⁷ An "attributable interest" is defined as "an interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to Section 73.3555." See 47 CFR § 73.7000. The rule also identifies as attributable "an interest of an entity providing more than 33 percent of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market." *Id.*

⁴⁸ See, e.g., *Kern Broadcasting Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 6584, 6585-86 (1995); *Canon Point Broadcasting*, 93 FCC 2d 643, 654-55 (Rev. Bd. 1983), *recon denied*, 94 FCC 2d 72, *review denied*, FCC 84-161 (no real-party-in-interest issue based merely on financial and business ties among family members).

tie-breaker showing.”⁴⁹ An applicant must also submit an attachment with its application “demonstrating its qualifications under the third tie-breaker criterion.”⁵⁰

16. Although OEI timely certified that it qualified for the third tie-breaker preference, it neglected to submit an attachment to support its certification. On January 31, 2022, over two months after the close of the filing window, OEI amended its Application to include a statement to support its third tie-breaker certification.⁵¹

17. The Commission has repeatedly held, and reminded applicants, that point claims and certifications must be supported with timely documentation; the Commission does not consider documentation submitted in amendments after the initial filing deadline.⁵² Accordingly, the failure to timely submit the requisite documentation is fatal to a point claim.⁵³ On alternative and independent grounds, even if OEI had timely submitted its supporting documentation, we find that it does not satisfy the third tie-breaker criterion. Specifically, to support its third tie-breaker claim, OEI relies on its Delafield, Wisconsin, application from the 2007 NCE FM filing window,⁵⁴ which was dismissed based on a fair distribution of service analysis.⁵⁵ Section 73.7003(c)(3)(i) of the Commission’s rules, however, provides that to qualify for the third tie-breaker criterion, an applicant must demonstrate that it had an NCE FM application from the previous filing window dismissed “in favor of an applicant possessing superior points or a tie-breaker showing.”⁵⁶ Neither the text of the rule, nor the order adopting the third tie-breaker criterion, provides that a dismissal based on the fair distribution of service analysis satisfies the third tie-breaker criterion.⁵⁷

18. Accordingly, we find that OEI was improperly designated as the tentative selectee based on the third tie-breaker analysis. We, therefore, grant in part the WCRC Petition and REC Objection and rescind our tentative selection of the OEI Application. Because the tie remains between WCRC and OEI,

⁴⁹ 47 CFR § 73.7003(c)(3)(i).

⁵⁰ See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021 Window*, Public Notice, 36 FCC Rcd 11458, 11467 (2021) (*NCE Filing Procedures Public Notice*); Schedule 340 Instructions at 17.

⁵¹ See Application File No. 0000167847, “Optima Enrichment Statement on Past NCE Window Dismissal.”

⁵² See, e.g., *First Comparative Order* at para. 18; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 111467 (“Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited. . . . The Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline.”); *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, 30 FCC Rcd 5135, 5143–44 (2015) (rescinding points to applicant that failed to timely document its point claims); *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017 (2010) (“applicant submitting no timely documentation at all cannot be found to have made a valid certification”).

⁵³ *Id.*

⁵⁴ Application File No. BNPED-20071022AFG.

⁵⁵ See *Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 12887, 12910, para. 68 (2010).

⁵⁶ 47 CFR § 73.7003(c)(3)(i) (emphasis added).

⁵⁷ 47 CFR § 73.7003(c)(3); *NCE LPFM Order*, 34 FCC Rcd at 12528–28, paras. 16–19.

we proceed to the tie-breaker of last resort – time-sharing.⁵⁸ We identify both WCRC⁵⁹ and OEI as the new tentative selectees of NCE MX Group 93⁶⁰ and direct the applicants to submit, within 90 days of the release of this Order, a voluntary time-sharing agreement compliant with section 73.7003(c)(4) of the Commission’s rules.⁶¹

B. NCE MX Group 95

19. Background. This group originally consisted of seven applications to serve different communities in Indiana and Kentucky. Olivet Nazarene University (ONU) proposed to serve Bloomington, Indiana; Lushomo Health Education Centre (Lushomo) and Appalachian Educational Communication Corporation (Appalachian) each proposed to serve Ellettsville, Indiana; New Beginnings Movement Inc. (New Beginnings) and Community Radio For Hoosiers Inc. (CRH) each proposed to serve Seymour, Indiana; World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation) proposed to serve Country Squire Lakes, Indiana; and Vanguard Association of Sunbelt Colleges Corporation (Vanguard) proposed to serve Corinth, Kentucky.⁶² The Bureau previously identified New Beginnings as the tentative selectee of NCE MX Group 95 based on a fair distribution analysis.⁶³ On July 12, 2022, the Bureau granted a petition to deny the New Beginnings Application filed by Lushomo, rescinded the tentative selection of New Beginnings, and identified World Federation as the new tentative selectee in NCE MX Group 95 based on a fair distribution analysis.⁶⁴ World Federation subsequently withdrew its application.⁶⁵ Accordingly, because ONU, Lushomo, and Appalachian do not claim eligibility for a fair distribution preference, and the Bureau found in the NCE MX Group 95 Letter Order that New Beginnings fails to meet the eligibility threshold for such a preference,⁶⁶ the four remaining applicants proceed to a point system analysis.

⁵⁸ *Id.* at 12528-12530, paras. 20-26 (explaining the new time-sharing rules and procedures).

⁵⁹ In accordance with its pledge, we direct WCRC to surrender or otherwise divest itself of its license for LPFM station WULP-LP, Waterloo, Wisconsin, prior to commencement of program tests of the full service NCE FM station.

⁶⁰ We note that on June 7, 2024, Albert Adam David (David) filed an Informal Objection to the WCRC Application. *See* Pleading File No. 0000245938. WCRC filed an Opposition to the Informal Objection on June 17, 2024. *See* Pleading File No. 0000246322. David filed a Reply on June 19, 2024. *See* Pleading File No. 0000246428. The Commission generally does not consider objections at this stage, but rather, reviews the merits of any objection if/when the subject application becomes accepted for filing. The Commission will review the merits of David’s objection after WCRC’s application is accepted for filing.

⁶¹ *See* 47 CFR §73.7003(c)(4). If WCRC and OEI are unable to reach a voluntary time-sharing agreement, they will be subject to mandatory time-sharing. *Id.* at § 73.7003(c)(5). In the event of mandatory time-sharing, the Commission directed Bureau staff to allow NCE applicants to confidentially select their preferred time slots, and if an applicant neglects to designate its preferred time slot, the Bureau is to select a time slot for the applicant. *See NCE LPFM Order*, 34 FCC Rcd at 12530.

⁶² *See* Application File Nos. 0000165984 (ONU Application), 0000167179 (World Federation Application), 0000167818 (Lushomo Application), 0000167447 (Appalachian Application), 0000167634 (CRH Application), 0000167516 (New Beginnings Application), and 0000167654 (Vanguard Application). Vanguard subsequently amended its application and was removed from NCE MX Group 95, and CRH withdrew its application.

⁶³ *Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 5702, 5706, para. 12 (MB May 2, 2022).

⁶⁴ *NCE MX Group 95*, Letter Order, 37 FCC Rcd 7928 (MB July 12, 2022) (*NCE MX Group 95 Letter Order*) (finding that New Beginnings provided incorrect population figures in its application and that it “fails to meet the eligibility threshold for a section 307(b) preference”).

⁶⁵ *See Actions*, Public Notice, PN-2-240710-01 (MB July 10, 2024).

⁶⁶ *See NCE MX Group 95 Letter Order*.

20. Discussion - Point System Analysis. No applicant claims points as an established local applicant or as a state-wide network. Each applicant claims two points for diversity of ownership. Lushomo, however, stated in its February 6, 2024, amendment to its application that it had one, previously unreported, other authorization at the time it filed its initial application, and did not submit documentation⁶⁷ to support its diversity claim prior to the close of the filing window.⁶⁸ We, therefore, do not award Lushomo points under this criterion. ONU's proposed 60 dBu contour would encompass 859.6 square kilometers with a population of 138,750. Lushomo's proposed 60 dBu contour would encompass 806.3 square kilometers with a population of 113,826. Appalachian's proposed 60 dBu contour would encompass 537 square kilometers with a population of 29,024. New Beginnings' proposed 60 dBu contour would encompass 1360.8 square kilometers with a population of 28,622.⁶⁹ No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, Lushomo is not credited with any points; ONU, Appalachian, and New Beginnings are each credited with a total of two points and proceed to a tie-breaker analysis.

21. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. ONU certifies that it has attributable interests in seven radio authorizations; Appalachian certifies that it has attributable interests in five radio authorizations; and New Beginnings certifies that it has attributable interests in six radio authorizations. However, Bureau staff independently verified that ONU currently has nine attributable radio authorizations⁷⁰ and that Appalachian currently has 14 attributable radio authorizations.⁷¹ Accounting for these errors, New Beginnings, therefore, prevails based on the first tie-breaker and is the new tentative selectee in NCE MX Group 95.

C. NCE MX Group 200

22. Background. This group originally consisted of four applications filed by Vida Ministry Inc. (VMI), Call Communications Group, Inc. (CCGI), Christian Ministries of the Valley, Inc. (CMV),

⁶⁷ See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465 ("To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, or a statement that the applicant holds no attributable interests in any nearby radio stations.").

⁶⁸ Lushomo's February 6, 2024, amendment, which includes a contour map, was submitted more than two years after the filing window closed, and does not cure its initial lack of documentation. 47 CFR § 73.7003(e) (an applicant's maximum qualifications are established at the time of application and will be reduced for any post-application changes that negatively affect any evaluation criterion); *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 9869, 9875-6, para. 18 (2022) ("we will not consider documentation to support a claimed comparative point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward"); *NCE MX Group 60*, Letter Order, 37 FCC Rcd 12269 (MB Oct. 20, 2022) (contour map submitted after close of filing window was a prohibited attempt at enhancing comparative position).

⁶⁹ In the *NCE MX Group 95 Letter Order*, the Bureau found that, using revised population data from an independent staff engineering analysis, New Beginnings would serve a total population of 28,622 people, and not 59,306 people, the figure New Beginnings provided in its application.

⁷⁰ See Facility ID Nos.: 33466; 50284; 86394; 90498; 92401; 93005; 148800; 171523; and 767364. ONU neglected to amend its applications to update its number of attributable authorizations, as required under section 1.65 of the rules. See 47 CFR § 1.65; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468-9.

⁷¹ See Facility ID Nos.: 2460; 143038; 143217; 143254; 144416; 145098; 156669; 768391; 768392; 768395; 768396; 768397; 768654; and 768657. Appalachian likewise neglected to amend its application to update its number of attributable authorizations.

and CCS Radio, Inc. (CCSR) to serve different communities in Texas.⁷² In the Third Comparative Order,⁷³ the Commission analyzed the applications under the point system.⁷⁴ Neither CMV nor CCSR received any points.⁷⁵ CCGI and VMI received a total of two points each,⁷⁶ and therefore, proceeded to a tie-breaker analysis. VMI prevailed on the first tie-breaker,⁷⁷ and the Commission identified VMI as the tentative selectee.

23. On February 16, 2023, CCGI filed a Petition to Deny (CCGI Petition) the VMI Application.⁷⁸ CCGI argued that the NCE MX Group 200 best technical proposal analysis was based on inaccurate calculations, due to CMV and CCSR's improper inclusion of areas of water in their coverage area calculations.⁷⁹ In the point system analysis, an applicant that proposes the best technical proposal in the group (i.e., proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area and population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.⁸⁰ CCGI asserted that, excluding the CMV and CCSR Applications, CCGI is eligible for two points for the best technical proposal because it would serve 25% more area and population than the remaining application, that of VMI, and thus CCGI should be the new tentative selectee.⁸¹

24. On April 27, 2023, the Bureau released a decision⁸² in which it granted in part and denied in part the CCGI Petition, granted the VMI Application, and dismissed the CCGI, CMV, and CCSR Applications. The Bureau held that because no party refuted CCGI's claims that CMV and CCSR each erroneously calculated its proposed new area, and Bureau staff independently verified that the CMV and CCSR Applications incorrectly included significant areas of water in the calculations, it granted the CCGI Petition in part.⁸³ However, the Bureau clarified that accepting CCGI's new calculation would not automatically render the CCGI application the new tentative selectee, as CCGI proposed, nor would it result in exclusion of the CMV and CCSR Applications from the best technical proposal analysis.⁸⁴

⁷² See Application File Nos. 0000167104 (VMI Application), 0000167747 (CCGI Application), 0000166728 (CMV Application), and 0000166698 (CCSR Application).

⁷³ *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at paras. 89-91 (Jan. 24, 2023) (*Third Comparative Order*).

⁷⁴ *Id.* at paras. 90-91. No applicant claimed a fair distribution of service preference.

⁷⁵ *Id.* at para. 90.

⁷⁶ *Id.* at paras. 90-91. The Commission awarded CCGI and VMI two points each for diversity of ownership; no applicant received points under the best technical proposal criterion.

⁷⁷ *Id.* at para. 91. VMI certified that it had no attributable interests in any radio authorization, and CCGI certified that it had attributable interests in nine radio authorizations.

⁷⁸ See Pleading File No. 0000210918.

⁷⁹ CCGI Petition at 1-2.

⁸⁰ See 47 CFR § 73.7003(b)(4). If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal.

⁸¹ CCGI Petition at 2.

⁸² See *NCE MX Group 200*, Letter Order, DA 23-358 (MB Apr. 27, 2023) (*MX Group 200 Letter*).

⁸³ *MX Group 200 Letter* at 4.

⁸⁴ *Id.* at 4.

Rather, the Bureau reanalyzed the applicants' technical proposals using CCGI's revised figures.⁸⁵ Accepting CCGI's undisputed new calculations, the Bureau found that there was still no applicant eligible for points under the best technical proposal criterion.⁸⁶ CCGI did not challenge any other points claim or calculation. Accordingly, the points total was unchanged, with VMI remaining the tentative selectee.⁸⁷

25. CCGI subsequently filed a petition for reconsideration,⁸⁸ which the Bureau referred to the Commission,⁸⁹ in which it repeated a number of arguments from its initial petition and also alleged, for the first time, that CMV and CCSR's population claims are likely inaccurate because CMV and CCSR's area coverage claims were overstated, and their population claims are unsupported.⁹⁰ Because CCGI did not provide any concrete data or adjusted population calculations to support its supposition, the Commission found "no basis to re-analyze Group 200 based on CCGI's unsupported claim of a hypothetical error" and denied the CCGI Recon Petition.⁹¹

26. On February 22, 2024, CCGI filed an Application for Review,⁹² asserting that the Commission failed to directly address its argument that the "Bureau's repeated practice of using an objector's coverage data to supplant a competing applicant's missing or erroneous coverage data, within a hearing proceeding"⁹³ violates both sections 1.254 and 73.7003(b) of the Commission's rules.⁹⁴

⁸⁵ See, e.g., *Comparative Consideration of 18 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 26 FCC Rcd 803, 809, para. 16 (2011) (*18 Group Comparative Order*) (using objector's coverage area calculations for a competing applicant in the best technical proposal analysis after determining applicant erroneously included a large area of water and did not provide corrected figures).

⁸⁶ *Third Comparative Order* at 22, para. 90. CCGI's proposed 60 dBu contour would encompass 1,157 square kilometers with a population of 218,225, and VMI, 539 square kilometers and 114,876 people. Using CCGI's calculations, CMV's proposed 60 dBu contour would encompass 1,321 square kilometers with a population of 221,770, and CCSR, 806.23 square kilometers and 108,218 people.

⁸⁷ *MX Group 200 Letter* at 4.

⁸⁸ Pleading File No. 0000215256 (filed May 26, 2023) (CCGI Recon Petition).

⁸⁹ See 47 CFR § 1.106(a)(1).

⁹⁰ CCGI Recon Petition at 2.

⁹¹ See *Comparative Consideration of Six Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 24-12 (Jan. 23, 2024) (*Fifth Comparative Order*). In the *Fifth Comparative Order*, the Commission also noted that the allegedly inaccurate population calculations were ascertainable prior to the filing of the CCGI Recon Petition, and therefore, should have been raised in the initial CCGI Petition. However, rather than dismissing the CCGI Recon Petition to the extent that it relied on the argument for the first time on reconsideration, the Commission found it would serve the public interest to determine the merits of the argument and, therefore, ensure the comparative point system was administered fairly and accurately. See *Fifth Comparative Order* at para. 47.

⁹² Pleading File No. 0000239658 (CCGI AFR). We note that under section 1.115 of the rules, an application for review is only appropriate where the action complained of was taken pursuant to delegated authority and review by the Commission is sought. Here, the action was taken by the full Commission. We will, however, treat the CCGI "Application for Review" as a petition for reconsideration, and in the interest of achieving administrative finality, consider it herein. See 47 CFR §§ 1.106(p), 1.115(c).

⁹³ *Id.* at 1-2. Although the point system analysis, a "paper hearing" process, must be conducted by the Commission, the Commission delegated authority to the Bureau staff to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded, and whether the application complies with all relevant Commission rules and policies. See, e.g., *Fifth Comparative Order* at para 71 (explaining "staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points."). In accordance with these procedures, the Bureau addressed the initial CCGI Petition in the *MX Group 200 Letter*.

⁹⁴ 47 CFR §§ 1.254, 73.7003(b).

Specifically, CCGI claims that because the point system selection procedures limit the Commission to consider only the “information provided in each application,” the Bureau has overstepped the narrow scope of the rules by adjusting, replacing, or correcting the claims of an applicant in the comparative analysis.⁹⁵ CCGI asserts that in NCE MX Group 200, after concluding that two applicants’ technical calculations were overstated and incorrect, “the only valid action should have been to reject and dismiss both applicants’ technical claims, excluding the applicants from the ‘best technical proposal calculation’ stage of the points hearing.”⁹⁶

27. Discussion – Best Technical Proposal Analysis. Section 73.7003(b) of the rules provides that the Commission awards comparative points, such as points for the best technical proposal, based on “information provided in each application.”⁹⁷ The rule does not, however, as CCGI claims, limit the Commission to consider only the information provided by the applicant when awarding points, nor does it require the Commission to ignore information validly submitted in the record through the petition to deny process.⁹⁸

28. Specifically, to expedite the comparative review and ultimate licensing of new NCE FM stations, the Commission generally relies initially only on the “information provided in each application,” such as applicant point certifications and documentation, and does not independently verify point claims. In contrast, to ensure the accuracy and fairness of the points system analysis, the Commission relies on the petition to deny process and information submitted by outside parties. When adopting its comparative point system, the Commission determined that it was in the public interest to, as one commenter proposed, “enable competing applicants to act as private attorneys general, disputing a tentative selectee’s claim.”⁹⁹ Allowing the Commission to consider and incorporate information interested parties submit “provides reasonable assurance that the statements [applicants] made will be verified for accuracy, either by competing applicants, the Commission, or the general public.”¹⁰⁰

29. The Commission’s point system analysis of NCE MX Group 200, and the Bureau’s subsequent re-analysis based on information provided during the petition to deny process, did not contravene the Commission’s rules and these well-established procedures. Specifically, during the initial best technical proposal analysis of NCE MX Group 200, the Commission relied solely on the applicants’ coverage and population calculations.¹⁰¹ Although the Bureau provided specific directions to enable each applicant to consistently and independently calculate its proposed station’s service area and population,¹⁰²

⁹⁵ CCGI AFR at 2.

⁹⁶ CCGI AFR at Attachment – CCGI Recon Petition at 5.

⁹⁷ 47 CFR § 73.7003(b).

⁹⁸ Similarly, section 1.254 of the rules provides that in a hearing proceeding “the burden of proof upon all such issues, shall be upon the applicant.” 47 CFR § 1.254. The rule does not, however, restrict the Commission to only consider information submitted by the applicant nor does it require the Commission to ignore information validly submitted in the record.

⁹⁹ 2001 NCE MO&O, 16 FCC Rcd at 5104, para. 88.

¹⁰⁰ *Id.*

¹⁰¹ See *Third Comparative Order* at para. 14 (“in considering this criterion, we have accepted applicant’s coverage and population claims”).

¹⁰² See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11466. The Bureau specified that area should be measured in square kilometers and exclude significant areas of water, e.g., ocean and lakes; population should be measured using the 2010 Census Block Data available from the Census Bureau. The Bureau also explained that applicants should use the centroid method of counting population (counting persons within each relevant census block) and calculate contours based on the standard predicted contours established in 47 CFR § 73.313(c).

applicants, however, occasionally make mistakes and submit erroneous calculations.¹⁰³ In NCE MX Group 200, two applicants neglected, as directed, to exclude significant areas of water when calculating their proposed stations' service areas. Accordingly, to ensure the accuracy of the NCE MX Group 200 best technical proposal analysis, the Bureau relied on corrected calculations submitted by CCGI, and verified by Bureau staff, and re-analyzed the entire group, consistent with the Commission's rules and past procedures.¹⁰⁴ The Bureau's best technical proposal analysis, however, was still always based on the essential information, the technical parameters, each applicant provided in its application. The Bureau never altered or modified the technical parameters, or relied on outside information, for this part of the analysis. Rather, the Bureau merely utilized corrected calculations to enable and ensure a complete and accurate comparison of NCE MX Group 200.¹⁰⁵ This action did not, as CCGI claims, "undermine the integrity of the application process,"¹⁰⁶ or violate the Commission's rules and well-established procedures. Accordingly, we deny the CCGI AFR.

IV. NEXT STEPS

30. Acceptability Studies and Filing of Petitions. Once the Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the

¹⁰³ When it adopted the best technical proposal criterion, the Commission considered a proposal to perform the calculation of area and population itself or require competing applicants to submit a joint engineering report calculating area and population in a manner agreed to by all parties. See *2000 NCE Order*, 15 FCC Rcd at 7403, para. 38. The Commission, however, ultimately decided to require each applicant to provide, using set standards, its own area and population calculations, which can be verified by the Commission or through the petition to deny process. *Id.* at 7404.

¹⁰⁴ As explained in the *Fifth Comparative Order*, the Commission has occasionally excluded applicants from the MX group's best technical proposal analysis when an applicant neglected to provide any, or provided incomplete, technical data, thus making the comparison impossible. See, e.g., *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6121, para. 49 (2007) (*76 Group Order*) (excluding applicant, which submitted no technical data, from the best technical proposal analysis). In contrast, in cases where an applicant has timely provided area and population data, but the data is subsequently found to be inaccurate, the Commission has not excluded the application from the best technical proposal analysis because of the error. Rather, the Commission re-analyzes the applicant's technical proposal using corrected data, independently verified by Bureau staff. See, e.g., *18 Group Comparative Order*, 26 FCC Rcd at 809, para. 16 (using objector's population figures where it claims a competing applicant specified incorrect area figures because it erroneously included large areas of water and applicant did not provide corrected figures); *76 Group Order*, 22 FCC Rcd at 6122, para. 52 (finding an applicant erroneously included large areas of water in its proposed area calculations and correcting the figure to enable an accurate analysis of the group). In the *Fifth Comparative Order*, the Commission followed these well established procedures to designate CCGI the new tentative selectee in NCE MX Group 54, a decision which CCGI has not contested. See *Fifth Comparative Order* at paras. 32-33 (using CCGI's revised population and area figures for a competing applicant in the best technical proposal analysis after determining the competing applicant provided erroneous and overstated numbers).

¹⁰⁵ Similarly, in the tie-breaker analysis, when the Commission determines, through independent verification or the petition to deny process, that an applicant has submitted an inaccurate count of its attributable interests and/or pending applications, it does not exclude the applicant from the tie-breaker analysis. Rather, the Commission corrects the count to enable an accurate comparison of the MX Group. See, e.g., *Fifth Comparative Order* at para. 57 (finding applicant neglected to include an authorization and recently granted application in its count of attributable interests and adjusting the applicant's count); *Comparative Consideration of 10 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-45 (June 5, 2023) at para. 33 (finding applicant neglected to include non-fill-in FM translators in its count of attributable interests and adjusting the count to correct the error).

¹⁰⁶ CCGI AFR at 2.

selectee's application has defects.¹⁰⁷ The Commission has studied the application of each new tentative selectee identified in NCE MX Group 93 and NCE MX Group 95 for application defects. Each tentative selectee appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, the three new tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.¹⁰⁸

31. Any argument that a specified tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the new point system analysis herein takes no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.¹⁰⁹

32. Forthcoming Staff Action. We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of the tentatively selected applications in NCE MX Group 93 and NCE MX Group 95 in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of each tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the fair distribution analysis in the First Comparative Order¹¹⁰ and the point system determination made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.¹¹¹

33. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether each applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.¹¹² The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the

¹⁰⁷ If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution or point system analysis. See 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

¹⁰⁸ 47 CFR § 73.7004.

¹⁰⁹ See *NCE Order on Reconsideration*, 35 FCC Rcd 10180, para. 13 ("A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete"); 47 CFR § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

¹¹⁰ *First Comparative Order*, *supra* note 13, at para. 49.

¹¹¹ 47 U.S.C. § 309(d).

¹¹² See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the NCE group, or where a new or novel question or substantial and material question of fact otherwise exists. In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

V. ORDERING CLAUSES

34. NCE MX Group 93. Accordingly, IT IS ORDERED, that the Petition to Deny, filed on September 1, 2022, by Waterloo Christian Radio Corporation (Pleading File No. 0000199133) IS GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED that the Informal Objection, filed on September 18, 2022, by REC Networks (Pleading File No. 0000200023), IS GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED, that the tentative selection of the application of Optima Enrichment, Inc. (Application File No. 0000167847) for a construction permit for a new NCE FM station in Delafield, Wisconsin, IS RESCINDED.

35. IT IS FURTHER ORDERED, that the Applications filed by Optima Enrichment, Inc. (Application File No. 0000167847) and Waterloo Christian Radio Corporation (Application File No. 0000167128) are TENTATIVELY SELECTED to be awarded construction permits on a TIME-SHARING BASIS for new NCE FM stations in Delafield, Wisconsin, and Ixonia, Wisconsin, and the applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectees' applications, and it is determined that grant of the applications serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of The Family Radio Network, Inc. (Application File No. 0000167074) and Community Public Radio, Inc. (Application File No. 0000166752).

36. IT IS FURTHER ORDERED, that the tentative selectee applicants electronically submit, within 90 days of the release of this Order, a time-sharing agreement, in accordance with section 73.7003(c)(4) of the Commission's rules, 47 CFR § 73.7003(c)(4), and pursuant to an acceptable agreement, we direct the Media Bureau, by public notice, TO GRANT the applications of Optima Enrichment, Inc. (Application File No. 0000167847) and Waterloo Christian Radio Corporation (Application File No. 0000167128), CONDITIONED UPON each selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, Waterloo Christian Radio Corporation must surrender or otherwise divest itself of its license for LPFM station WULP-LP, Waterloo, Wisconsin, prior to commencement of program tests of the full service NCE FM station. If the tentative selectees are unable to reach a voluntary time-sharing agreement within the 90-day period, the tentative selectees will proceed to mandatory time-sharing, in accordance with section 73.7003(c)(5) of the Commission's rules, 47 CFR § 73.7003(c)(5).

37. NCE MX Group 95. Accordingly, IT IS ORDERED, that the Application filed by New Beginnings Movement Inc. (Application File No. 0000167516) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Seymour, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Olivet Nazarene University (Application File No. 0000165984),

Lushomo Health Education Centre (Application File No. 0000167818), and Appalachian Educational Communication Corporation (Application File No. 0000167447), and TO GRANT the application of New Beginnings Movement Inc. (Application File No. 0000167516) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions

38. NCE MX Group 200. Accordingly, IT IS ORDERED, that, pursuant to section 1.106 of the Commission's rules,¹¹³ the Application for Review filed on February 22, 2024, by Call Communications Group, Inc. (Pleading File No. 0000239658), when considered as a petition for reconsideration, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹³ 47 CFR § 1.106.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Alaska Connect Fund	)	WC Docket No. 23-328
	)	
Connect America Fund—Alaska Plan	)	WC Docket No. 16-271
	)	
Universal Service Reform—Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 1, 2024

Released: November 4, 2024

Comment Date: (60 days after date of publication in the Federal Register)

Reply Comment Date: (90 days after date of publication in the Federal Register)

By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we take important and necessary steps to ensure continued support for the advancement of modern mobile and fixed broadband service in Alaska. The Commission has long recognized that rural and high-cost areas of Alaska are some of the hardest and most costly to serve in the country, with many residents lacking access to high-quality, affordable broadband that maintains parity with the technological advances that consumers living elsewhere in the nation enjoy. In 2016, to address the unique needs of providing broadband service in Alaska, the Commission established the 10-year Alaska Plan to support the maintenance and deployment of voice and broadband fixed and mobile services. This Plan, along with other frozen support and model-based support, has resulted in substantially increased deployment of both fixed and mobile broadband services. As of the end of 2023, carriers in Alaska receiving high-cost support have reported deploying or upgrading fixed broadband service to more than 96,000 locations, the majority of which are served at a speed of 25/3 Mbps or

greater.¹ Since January 2017, the number of Alaskans served by 4G LTE service or better by the Alaska Plan providers increased from roughly 33,000 to 98,000 in areas eligible for support.²

2. While the original Alaska Plan and other Alaska support mechanisms have helped make significant progress in Alaska, many areas in the state remain unserved or underserved. We can determine statewide, using the National Broadband Map, that about 21% of broadband-serviceable units lack at least 25/3 Mbps and about 28% of broadband-serviceable units lack at least 100/20 Mbps fixed terrestrial service. An estimated 51,000 Alaskans still receive 3G service—an outdated technological standard³—or worse.⁴ Historic levels of federal investments from the National Telecommunications and Information Administration’s (NTIA)’s Broadband Equity, Access, and Deployment (BEAD) Program will bring broadband to unserved and underserved locations throughout Alaska. Nonetheless, there will be an ongoing need for funding to maintain and operate the broadband networks built by the Universal Service Fund (USF) and BEAD as well as a need to support the deployment of mobile broadband which is not being funded through BEAD.

3. Recognizing the importance of addressing current broadband funding concerns and the long-term broadband needs of Alaskan households in a rapidly changing funding environment, today we move forward with establishing the Alaska Connect Fund program (the “Alaska Connect Fund” or “ACF”) to provide ongoing and certain support to both mobile and fixed carriers receiving USF high-cost support in Alaska through 2034, with increased support amounts that reflect the transition to higher speed service goals for the ACF. With ACF, we also apply lessons learned from our current Alaska support programs and ensure high-cost support complements other federal funding programs.

4. The support needs and landscape for mobile and fixed services in Alaska are different. Therefore, as we did with the original Alaska Plan, we establish separate mechanisms for mobile and fixed providers, with each mechanism tailored to the needs of the supported services. On the fixed side, the Commission’s support and broadband service goals will be materially affected by, and are intended to be complementary to, the BEAD awards, as well as other federal broadband infrastructure funding. We

¹ Figure is based on deployment data certified in the HUBB as of March 06, 2024, for deployment through December 31, 2023 and available on the Connect America Fund Broadband Map, <https://data.usac.org/publicreports/caf-map/> (last visited Sept. 9, 2024).

² Staff analysis based on Dec 2016 FCC Form 477 Mobile Broadband Deployment LTE filings and the December 2023 AK Special Collection LTE filings, intersected with the Alaska Population Distribution Model. *See Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373 (2020) (*Alaska Population Distribution Model Order*). WTB and OEA required the eight mobile participants in the Alaska Plan to file mobile wireless coverage data consistent with the FCC Form 477 reporting requirements annually until March 1, 2028. *Connect America Fund—Alaska Plan; Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 16-271, 19-195, Order, 38 FCC Rcd 7401, 7401, para. 1 (WTB/OEA 2023) (*AK Form 477 Data Special Collection Order*).

³ In fact, nationwide providers have shut down their respective 3G networks and have shifted toward deployment of 5G-NR throughout the country. *See Alaska Connect Fund*, WC Docket No. 23-328, Notice of Proposed Rulemaking, 38 FCC Rcd 9982, 10013-14, para. 66 (2023) (*Alaska Connect Fund Notice*).

⁴ Based on staff analysis from December 2023 AK Special Collection LTE filings, intersected with the Alaska Population Distribution Model. *See Alaska Population Distribution Model Order*, 35 FCC Rcd 10373 (adopting the Alaska Population Distribution Model). Two of the eight mobile providers continue to have commitments to provide some Alaskans with 3G or less at the December 31, 2026 final milestone. *Wireless Telecommunications Bureau Approves GCI’s Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9540 (WTB 2020) (*GCI Second Revised Performance Plan Public Notice*) (approving the current operative plan for GCI, which commits to cover 8,622 Alaskans with 3G and 10,487 Alaskans with 2G by December 31, 2026); *Three Updated Alaska Performance Plans* Public Notice (approving revised performance plans for the three mobile providers with 2G commitment for TelAlaska—technology code 86—covering 1,663 Alaskans by December 31, 2026).

provide a period of transitional support (ACF Transition) for existing support recipients through 2028 to allow time for network deployments funded by these programs to be completed or nearly completed. During the ACF Transition, carriers will be responsible for maintaining the same level of service and meeting any deployment obligations they are committed to under the Commission's Alaska Plan, Alaska Communications Systems (ACS), and Alternative Connect America Cost Model (A-CAM) programs. Following the ACF Transition, beginning January 1, 2029, we establish the framework for the Alaska Connect Fund Fixed services program (Fixed ACF) to provide fixed service providers ongoing technology-neutral support through the end of 2034, focused on supporting the maintenance and operation of broadband and voice capable networks in Alaska. Because a full picture of fixed broadband deployment will not be clear until BEAD and other federal funding is awarded, we incorporate sufficient flexibility into Fixed ACF to evaluate and address future deployment needs. This two-phased approach will allow for continued and certain support for existing USF participants for a set period, while allowing the Commission to develop a complete picture of how the BEAD program and other federal network deployment funding will be allocated in Alaska to ensure that the Fixed ACF program complements these programs most effectively for the benefit of Alaskan consumers. The Commission also adopts phased down high-cost support for any current recipient that is authorized to receive less support during Fixed ACF than during ACF Transition.

5. While this Order provides a framework for Fixed ACF, we delegate several requirements to the Wireline Competition Bureau (WCB) to resolve through an opportunity for public notice and comment, including developing a process of accepting offers for support, providing guidance on how eligible carriers can participate in the program, determining eligible locations, allocating support for eligible locations, and determining whether support for new deployment is necessary, including whether a budget adjustment is in the public interest. We delegate to WCB authority to determine whether any adjustments to the public interest obligations, including any updates to the methodology for the Alaska-specific benchmark, are in the public interest. We also delegate authority to WCB to determine whether additional accountability and oversight measures, including certifications, reporting requirements or compliance measures are necessary for Fixed ACF and any phase-down support recipients.

6. On the mobile side, because BEAD does not explicitly fund mobile deployments, the Alaska Connect Fund has an important role to play in ensuring Alaskans have access to reliable, advanced mobile service, particularly in upgrading networks to 5G and encouraging deployment to unserved and underserved areas. As with fixed service, we adopt a two-phase approach for mobile service that balances the importance of giving mobile providers certainty of funding in certain areas to help meet our goals of 5G deployment, with the need to ensure funding is not being targeted to last generation technologies (e.g., 2G and 3G) but rather is targeted to areas where it is needed the most and to address concerns of duplicate support. The framework we adopt for mobile support relies on the improved mobile coverage data obtained in the Broadband Data Collection (BDC), which is reflected on our National Broadband Map and which provides us with the most comprehensive picture to date about where mobile broadband service is and is not available across the country, including Alaska.⁵ Overall, we extend support for a set period for mobile providers that: (1) participated in the Alaska Plan and (2) choose to opt into the Alaska Connect Fund, subject to conditions set forth in this *Report and Order*. The terms and goal speeds for mobile support under the Alaska Connect Fund will be based on whether an eligible area has a single or multiple subsidized providers.⁶ For eligible areas where there is only one subsidized provider (single-

⁵ See Federal Communications Commission, *National Broadband Map*, <https://broadbandmap.fcc.gov/home> (last visited July 24, 2024). Providers must report availability data biannually as part of the BDC. See 47 U.S.C. § 642(a)(1)(A); 47 CFR § 1.7004 (establishing the scope, content, and frequency of BDC filings). Mobile wireless broadband service providers report their coverage areas using standardized propagation modeling parameters. 47 CFR § 1.7004(c). That data are then subject to audits, verifications, and challenges. 47 CFR § 1.7006. The National Broadband Map is updated to reflect the results of these processes.

⁶ "Single-support areas" refers to areas that are being covered by only one Alaska Plan mobile-provider participant in Alaska, as defined in further detail in Section III.D.2.a, *infra*, of this Order. "Duplicate-support areas" refers to
(continued....)

support areas), the current provider will continue receiving support through the end of 2034 and will be expected to enter into a new performance plan with 5G service where technically and financially feasible. For eligible areas with multiple subsidized providers (duplicate-support areas), we adopt a two-phased approach to resolve duplicative support: (1) an Alaska Connect Fund Mobile Phase I (ACF Mobile Phase I) that extends support for the mobile providers receiving support in these duplicate-support areas under the current Alaska Plan until December 31, 2029; and (2) an Alaska Connect Fund Mobile Phase II (ACF Mobile Phase II) that would provide a single provider in those areas with support through the end of 2034. We delegate authority to the Wireless Telecommunications Bureau (WTB) to implement and administer various components of the mobile portion of the Alaska Connect Fund. For example, we delegate authority to WTB to review and approve performance plans for mobile ACF support. We also delegate authority to WTB in coordination with the Office of Economics and Analytics (OEA) to develop and publish a map of areas eligible and ineligible to receive ACF mobile support. We also delegate authority to WTB to implement accountability and oversight measures for mobile-support recipients.

7. In the Further Notice, for mobile service providers, we seek comment on the implementation of ACF Phase II, including service level goals for ACF Mobile Phase II, the methodology to determine support amounts for duplicate support areas, and the competitive or alternative mechanism to distribute support for duplicate support areas. We also seek comment on how to distribute support in unserved areas, Tribal consent requirements for the ACF, and other additional issues that would impact the Alaska Connect Fund.

II. BACKGROUND

8. In the *Alaska Connect Fund Notice of Proposed Rulemaking (Alaska Connect Fund Notice)*, we sought comment on the next phase of fixed and mobile high-cost support in Alaska.⁷ We asked how the Commission could best support the rural and remote areas of Alaska once the support terms for the current incumbent Local Exchange Carriers (LECs) and competitive eligible telecommunications carriers (CETCs) under various current high-cost mechanisms have ended and how the Alaska Connect Fund should account for other support mechanisms and funding programs in Alaska.⁸ We sought innovative solutions to the challenges of providing broadband service in Alaska. The *Alaska Connect Fund Notice* also considered petitions filed by the Alaska Telecom Association (ATA) and Alaska Remote Carrier Coalition (ARCC) seeking comment on the issues and proposals raised from each.⁹ ATA's petition for expedited rulemaking, filed on January 4, 2023, sought to extend Alaska Plan support through December 2034 with automatic one-year extensions thereafter, increase support amounts to account for inflation, allow the participation of Alaska Communications Systems and Alaska A-CAM carriers, and update performance commitments for participants.¹⁰ ARCC's petition for rulemaking, filed on November 29, 2022, requested that the Commission initiate a rulemaking to address the extremely high costs of middle-mile transport expenses in Alaska by adopting its Alaska Middle Mile Expense

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areas that are being covered by two or more Alaska Plan mobile provider participants in Alaska, as defined in further detail in Section III.D.2.a, *infra*, of this Order. However, areas that are ineligible for mobile support under the Alaska Connect Fund, such as areas with one unsubsidized provider that offers 5G-NR at 7/1 Mbps, or three or more mobile providers providing at least 4G LTE at 5/1 Mbps mobile service (with at least one being an unsubsidized provider), as described in further detail in Section III.D.2.d, *infra*, of this Order, will not be considered to be single- or duplicate-support areas.

⁷ See generally *Alaska Connect Fund Notice*, 38 FCC Rcd 9982.

⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10017-18, para. 76.

⁹ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026-27, 10034-35, paras. 98, 115, 117, 118 (asking about the ATA Petition); *id.* at 10021-23, paras. 83 n.271, 85, 87 n.277 (asking about the ARCC Petition).

¹⁰ *Alaska Telecom Association Petition for Expedited Rulemaking*, WC Docket Nos. 10-90, 16-271, at 2-3 (Jan. 4, 2023) (ATA Petition), <https://www.fcc.gov/ecfs/document/1010434769472/1>; *Alaska Connect Fund Notice*, 38 FCC Rcd at 9990, para. 13.

Support (AMMES) to provide funding support to carriers servicing locations designated as having ultra-high costs.¹¹

9. Given the unique climate and geographic conditions in Alaska, the Commission previously found it was in the public interest to provide Alaskan carriers with the option of receiving fixed frozen amounts of support over ten years to deploy and maintain their fixed and mobile networks instead of the model-based support offered elsewhere. Accordingly, in 2016, the Commission adopted the *Alaska Plan Order* and the *ACS Order*.¹² The Alaska Plan provided an opportunity for Alaska rate-of-return and mobile carriers to elect to receive support at frozen levels for a 10-year term through 2026, in exchange for meeting individualized performance obligations in high-cost areas of Alaska.¹³ The Alaska Plan supports 13 fixed providers and eight CETCs providing mobile service as affiliates of the fixed providers.¹⁴ Fixed providers are subject to individual performance plans requiring broadband deployment to a defined number of locations or are required to maintain their level of service. The eight competitive ETCs were receiving high-cost support for mobile services under the Commission's previous mobile-support regime,¹⁵ which based per-line mobile support on the per-line support received by the wireline incumbent, known as the identical support rule.¹⁶ To retain their support, the mobile providers submitted

¹¹ *Alaska Remote Carrier Coalition Petition for Rulemaking to Adopt Alaska Middle Mile Expense Support Plan*, WC Docket No. 16-271, RM-11938, at 3 (Nov. 29, 2022) (ARCC Petition), <https://www.fcc.gov/ecfs/document/1130479802393/1>; *Alaska Connect Fund Notice*, 38 FCC Rcd at 9990-91, para. 15.

¹² See generally *Connect America Fund—Alaska Plan, et al.*, WC Docket Nos. 16-271, 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086 (2016) (*ACS Order*).

¹³ Thirteen companies are authorized for Alaska Plan support for fixed services.

¹⁴ *Alaska Plan Order*, 31 FCC Rcd at 10140, 10159, paras. 1, 66 (“In this Order, the Commission adopts an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska, building on a proposal submitted by the Alaska Telephone Association.”); 47 CFR §§ 54.5, 54.201(a), 54.317(d).

¹⁵ See *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 75 (“If the eight eligible competitive ETCs participate in the Alaska Plan, this would result in approximately \$74 million being dispersed annually for each of the 10 years that the plan is in effect.”).

¹⁶ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026-27, para. 98 (explaining mobile support under the Alaska Plan and the identical support rule); see also *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17827-29, paras. 502-07 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). The wireline cost-based identical support rule created inefficiencies when this same support was awarded to mobile providers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17827-28, paras. 502-04; *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1471-72, para. 10 (2008) (*CETC Support Reform Notice*) (“In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC’s per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act’s universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.”), <https://docs.fcc.gov/public/attachments/FCC-08-4A1.pdf>; *CETC Support Reform Notice*, 23 FCC Rcd at 1474, paras. 13-14 (seeking comment regarding seeking cost data from competitive ETCs). The identical support rule was also resulting in exploding costs due to duplicate support of multiple mobile providers in the same service area, such as at least three competitive ETCs serving Anchorage, Fairbanks, and Juneau, respectively. *Alaska Plan Order*, 31 FCC Rcd at 10169, n.185; *USF/ICC Transformation Order*, 26 FCC Rcd at 17828, 17834, paras. 505 n.837, 526 & n.872.

performance plans that committed to cover a delineated population in remote Alaska with a specified mobile technology, ultimately with a goal of deploying 4G LTE at 10/1 Mbps to all areas,¹⁷ though the providers were allowed to make lesser commitments to certain locations due to limitations, such as difficult terrain or lack of access to available middle-mile transport, that precluded such upgrades.¹⁸

10. Two rate-of-return companies elected not to participate in the Alaska Plan, instead electing to receive Alternative Connect America Cost Model (A-CAM) support (specifically, revised A-CAM I), which concludes in 2028.¹⁹ The *ACS Order* is a tailored service plan for Alaska Communications Systems (ACS), the only price cap carrier in Alaska, under which ACS receives frozen support for a 10-year term (ending in 2025) in return for offering voice and broadband service to at least 31,571 locations, primarily in high-cost census blocks that were not served by unsubsidized competitors.

11. In late September 2024, the Alaska Broadband Office (ABO) released its draft Notice of Funding Opportunity (ABO Draft NOFO) and other related documents for the Alaska Broadband Grant Program, which details the application process, selection criteria and timeline for awarding Alaska's NTIA Broadband Equity Access and Deployment (BEAD) funding.²⁰ The ABO estimates the overall

¹⁷ *Alaska Plan Order*, 31 FCC Rcd at 10167, 10172, paras. 86, 102 (imposing additional conditions on providers unable to commit to provide 4G LTE at 10/1 Mbps).

¹⁸ See, e.g., *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86; *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers that Elected to Participate in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 31 FCC Rcd 13317, 13318, 13320-23, Appx. (WTB Dec. 21, 2016) (*Alaska Wireless Commitments Notice*) (approving the original performance plans with six of the eight performance plans having commitments that were for less than 4G LTE (technology code 83) and less than 10/1 Mbps). WTB subsequently approved revised performance plans for ASTAC, GCI, Bristol Bay Cellular Partnership, TelAlaska Cellular, and Windy City Cellular. See *Wireless Telecommunications Bureau Approves ASTAC's and GCI's Revised Performance Plans Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 34 FCC Rcd 12183, 12184 (WTB 2019) (approving ASTAC's operative performance plan) (*ASTAC Revised Performance Plan Public Notice*); *Wireless Telecommunications Bureau Approves GCI's Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9540 (WTB 2020) (*GCI Second Revised Performance Plan Public Notice*) (approving the current operative plan for GCI, which commits to cover 8,622 Alaskans with 3G and 10,487 Alaskans with 2G by December 31, 2026); *Wireless Telecommunications Bureau Approves Bristol Bay Cellular Partnership's, TelAlaska Cellular's, and Windy City Cellular's Revised Performance Plans Pursuant to the Alaska Plan*, WC Docket No. 16-271, Public Notice, DA 24-551 (WTB 2024) (*Three Updated Alaska Performance Plans Public Notice*) (approving revised performance plans for the three mobile providers with 2G commitment for TelAlaska—technology code 86—covering 1663 Alaskans by December 31, 2026).

¹⁹ See *Wireline Competition Bureau Authorized 186 Rate-of-Return Companies to Receive An Additional \$65.7 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (2019); see also *Wireline Competition Bureau Authorizes Totah Communications, Inc. to Receive Additional Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3779 (2019). The summary report for all carriers authorized to receive A-CAM support, including those subject to prior authorizations in December 2016, January 2017, July 2018, and April 29, 2019 is available at <https://docs.fcc.gov/public/attachments/DOC-352788A1.xlsx> (listing two Alaska carriers). We note that no Alaska carrier elected to accept the offer of Enhanced A-CAM support. *Wireline Competition Bureau Announces Carriers That Have Accepted Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-920 (Oct. 4, 2023) (*Enhanced A-CAM Acceptance Public Notice*). See also *Expanding Broadband Service Through the ACAM Program*, et al., WC Docket Nos. 10-90, RM-11868, et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 38 FCC Rcd 7040 (July 24, 2023) (*Enhanced A-CAM Order*); Letter from Jason Custer, Vice President Regulatory and Government Affairs, Alaska Power & Telephone to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, 16-271 (filed Sept. 27, 2023) (requesting ability to participate in Alaska Connect).

²⁰ See Alaska Broadband Office, Alaska Broadband Grant Program, *Draft Notice Of Funding Opportunity for Public Review* (Sept. 25, 2024), <https://www.commerce.alaska.gov/web/abo/AlaskaBroadbandGrantProgram.aspx> (last (continued....))

process will take a full year from the release of the ABO Draft NOFO, with applications due in April 2025 and award announcements in the fall of 2025.²¹

III. DISCUSSION

12. Below we establish separate approaches for the Alaska fixed and mobile markets to address the differing circumstances in each. However, these two sectors share certain common aspects. Before explaining the details of our revised fixed and mobile mechanisms, we address the eligible telecommunications carrier requirements and our revised budget.

A. ELIGIBLE TELECOMMUNICATIONS CARRIER REQUIREMENT

13. Consistent with the 1996 Communications Act and our long-standing rules for the high-cost program, all Alaska Connect Fund recipients must be designated as an Eligible Telecommunications Carrier (ETC) before receiving high-cost support from either Fixed ACF or Mobile ACF. ETC status is mandated by the Communications Act and is a hallmark statutory requirement of the USF high-cost program, serving as an important check on reliability and accountability for consumers.²²

14. In the *Alaska Connect Fund Notice*, the Commission sought comment on eligibility for Alaska Connect Fund support.²³ Some commenters suggest eliminating the requirement to obtain ETC designation, citing difficulties obtaining ETC status and other programs that are not subject to the ETC statutory rules.²⁴ The Alaska Rural ISP Coalition (ARIC) suggests that we, instead, impose alternative requirements “ensuring a level of responsibility appropriate for Alaska Connect eligibility.”²⁵ However,

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visited Oct. 24, 2024) (September ABO Draft NOFO); *see also* Alaska Broadband Office, Program Overviews and Timelines, *State of Alaska Initial Proposal Volume 2 – Documentation* (Sept. 27, 2024), <https://www.commerce.alaska.gov/web/abo/ProgramOverviewsandTimelines.aspx> (last visited Oct. 24, 2024) (identifying fall 2025 for announcement of awards) (ABO Initial Proposal Volume 2); Alaska Broadband Office, Alaska Broadband Grant Program, *In-State Mapping Challenge Preliminary Results*, <https://www.commerce.alaska.gov/web/abo/Home.aspx> (last visited Oct. 24, 2024). NTIA approved the ABO Initial Proposal in October 2024. NTIA, Office of Public Affairs, Press Release, *Two States Requested Access to BEAD Funds Totaling Over \$1.7 Billion* (Oct. 11, 2024).

²¹ ABO Initial Proposal Volume 2 at 8 (stating, “The expected end-to-end timeline through the finalization of Alaska’s Broadband Grant Program subgrants: approximately 365 days”); *see also* September ABO Draft NOFO at 11-12; Alaska Broadband Office, Alaska Broadband Grant Program, *Draft Notice Of Funding Opportunity for Public Review I* at 11-12 (Oct. 16, 2024), <https://www.commerce.alaska.gov/web/abo/AlaskaBroadbandGrantProgram.aspx> (last visited Oct. 24, 2024) (October ABO Draft NOFO) (stating the grant application period will open Dec. 16, 2024 and close on April 14, 2025, and ABO estimates an announcement of awards between Sept. 9, 2025-Oct. 8, 2025). The public comment period for October ABO Draft NOFO ends Nov. 15, 2024. *See* Alaska Broadband Office, Alaska Broadband Grant Program, <https://www.commerce.alaska.gov/web/abo/AlaskaBroadbandGrantProgram.aspx> (last visited Oct. 24, 2024).

²² 47 U.S.C. §§ 214 (e), 254(e); 47 CFR §§ 54.201-207 (Carriers Eligible for Universal Service Support); 47 CFR § 54.317(b) (Carriers eligible for support).

²³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025-26, para. 95.

²⁴ Quintillion Subsea Operations, LLC Comments at 4-5 (Quintillion Comments) (asking the Commission to forbear from the ETC requirement); Alaska Rural ISP Coalition Comments at 2, 5-7 (ARIC Comments) (asking the Commission to eliminate the ETC requirement); Letter from Shawn Williams, Alaska Broadband Advocates, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-271, 23-328, and 09-197, at 1 (filed May 16, 2024) (ABA May 16, 2024 *Ex Parte*); OptimERA Reply at 3; *see also* Alaska Middle Mile Alliance Comments at 6 (AMMA Comments) (“All broadband providers willing to serve a remote community or location, should be allowed to compete for funds.”); Tribal Access Coalition Comments at 4 (“We support eliminating all barriers . . .”) (TAC Comments).

²⁵ ARIC Comments at 5.

we agree with commenters that, consistent with the Communications Act and the Commission's longstanding practice for the high-cost program, an Alaska Connect Fund support recipient must be designated as an ETC before receiving high-cost support.²⁶ These commenters properly recognize that the statutory provisions of the Communications Act mandate the Commission only provide universal service high-cost support to carriers with ETC status.²⁷ ATA and NTCA-The Rural Broadband Association (NTCA) also point to the oversight ability of the Regulatory Commission of Alaska (RCA) and the Commission as an effective consumer protection of service standards and quality.²⁸ We recognize that becoming an ETC carries with it certain obligations, such as a requirement to provision voice service, which is not a business that all broadband providers in Alaska are engaged in providing.²⁹ However, we agree with Alaska Power and Telephone that voice service remains critical to health and safety, particularly in Alaska, and is a core element of universal service.³⁰ Moreover, we note that in Alaska, the RCA is the governing body that adjudicates the process and designates carriers as ETCs in their service territories,³¹ and without notice from the State that it is declining its jurisdiction, the Commission does not have authority to designate ETC status for carriers in Alaska.³²

15. Therefore, we require that any ACF recipient must be an ETC before it can receive support. Carriers currently receiving support will already have obtained ETC designation. Any provider awarded federal infrastructure support through BEAD or other programs that is not already an ETC, however, will be required to become an ETC and provide certification and evidence of its designation to WCB and WTB (together "the Bureaus") in order to receive ACF support.³³ The framework we establish in this Order provides time for these providers to seek ETC designations. We direct WCB to provide guidance on appropriate deadlines by which providers must obtain an ETC designation, and whether election of Fixed ACF support will be conditioned on having already obtained ETC designation or whether a period of time will be allowed following acceptance to obtain ETC designation. In the Further Notice, we seek comment on whether ACF Mobile Phase II should allow any Alaska ETC to participate in the proposed competitive mechanism intended to resolve duplicative support, including those that are not currently receiving support under the Alaska Plan.³⁴ Even if the Commission expands mobile support to include carriers that are not current Alaska Plan support recipients, we reiterate that mobile providers

²⁶ See Alaska Telecom Association Comments at 10-11 (ATA Comments); Alaska Telecom Association Reply at 9-10 (ATA Reply); NTCA-The Rural Broadband Association Comments at 5-6 (NTCA Comments); Alaska Broadband Office Comments at 1-2 (ABO Comments); Alaska Power & Telephone Company Comments at 2 (APT Comments); Alaska Communications Reply at 6 (ACS Reply). To the extent that we have the authority to forbear from the requirement that support recipients be ETCs, we find that the criteria for forbearance are not met and thus we do not do so.

²⁷ 47 U.S.C. §§ 214(e), 254(e).

²⁸ ATA Reply at 10 (citing Alaska Admin. Code § 53.400); NTCA—The Rural Broadband Association Comments Reply at 5 (NTCA Reply) (encouraging the Commission to use its oversight authority).

²⁹ See Alaska Rural ISP Coalition Reply at 1 (ARIC Reply) (indicating that ILECs and CLECs are uninterested in providing voice service).

³⁰ See APT Comments at 19-20 (discussing the critical need for voice service to protect the well-being of Alaska citizens).

³¹ 47 U.S.C. § 214(e)(6); 47 CFR §§ 54.201-203. See *Alaska Connect Fund Notice*, 38 FCC Rcd at 9998-99, para. 32; see also Regulatory Commission of Alaska, Telephone,

<https://rca.alaska.gov/RCAWeb/ForConsumers/Telephone.aspx>; see also 3 AAC § 53.400.

³² 47 U.S.C. § 214(e)(3); 254(e); 47 CFR §§ 54.201-203; *Alaska Connect Fund Notice*, 38 FCC Rcd at 9998-99, para. 32.

³³ See, e.g., October ABO Draft NOFO at 6 (allowing any entity meeting the requirements to apply for funding).

³⁴ See *infra* Section V.C.1. (Competitive Mechanism to Eliminate Duplicate Support, Eligible Providers).

must receive ETC designation from the RCA before they are eligible to participate in the competitive process in ACF Mobile Phase II duplicate-support areas.

16. Some Tribal organizations commented about a need for a “streamlined” or special process for Tribal entities seeking ETC status in Alaska that recognizes Tribal sovereignty.³⁵ We note that in the *2000 Tribal Order* the Commission established a process tailored specifically to carriers serving Tribal lands, whereby a carrier may seek ETC designation directly from the Commission.³⁶ The Tribal Access Coalition (TAC) commented that a Tribal entity should not have to partner with an ETC to obtain high-cost support,³⁷ and NTTA argued that the Commission should either automatically grant ETC status or create an expedited process for ETC designation for new, non-ILEC carriers in Alaska that are serving Tribal Nations and Tribal Lands receiving deployment funding through other state and federal programs.³⁸ The Commission remains committed to making advanced voice and broadband service available to all consumers in Alaska. As explained above, ETC designation is a statutory requirement, and the RCA has designation authority and providers are subject to the RCA’s designation process. Therefore, we do not require a different standard for carriers serving Tribal lands. However, the Commission will continue to explore whether our authority affords us any additional opportunities for ensuring that a Tribally owned carrier in Alaska that is able to meet the requirements for ETC designation is able to obtain that status and participate in the program. We will prepare guides and resources and conduct outreach to help inform Tribal providers about the ETC designation process. We direct WCB and WTB, in conjunction with the Office of Native Affairs and Policy, to inquire further regarding the experience of Tribally owned and operated carriers in Alaska.

B. BUDGET

17. We next conclude that an increase in support, starting January 1, 2025, is warranted for all current recipients of high-cost fixed and mobile support in Alaska. In the *Alaska Connect Fund Notice*, we asked about an appropriate budget for the Alaska Connect Fund that would provide support that is sufficient to achieve the Commission’s goals while not burdening consumers.³⁹ We inquired about the size of a budget that would be necessary to support continuity of service in areas already built out.⁴⁰ We also asked whether it was appropriate for the Commission to increase for inflation the current budget of existing, Alaska focused high-cost programs.⁴¹ Further, we sought comment on how the Commission

³⁵ ARIC Comments at 10; NANA Regional Corporation, Inc. Reply at 2 (NANA Reply); National Tribal Telecommunications Association Comments at 5 (NTTA Comments); Alaska Public Interest Research Group Comments at 5 (AKPIRG Comments) (suggesting creation of a Tribal ETC status).

³⁶ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, et al., WC Docket No. 96-45, Report and Order, 15 FCC Rcd 12208, 12265-69, paras. 115-127 (2000) (*2000 Tribal Order*); see also, e.g., *Telecommunications Carriers Eligible for Universal service Support; Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 34 FCC Rcd 10533 (2019) (designating Red Spectrum as ETC for CAF Phase II on Coeur d’Alene Reservation); *Telecommunications Carriers Eligible for Universal service Support; Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 35 FCC Rcd 4416 (2020) (designating Fond du Lac Communications, Inc. as ETC in CAF-eligible areas in Minnesota); *Telecommunications Carriers Eligible for Universal service Support; Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 35 FCC Rcd 12939 (2020) (designating SiyCom as ETC for the Blackfeet Tribe in Montana Browning Exchange); *Telecommunications Carriers Eligible for Universal service Support; Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384 (2021) (designating ETCs for the Rural Digital Opportunity Fund program).

³⁷ TAC Comments at 2.

³⁸ NTTA Comments at 5 (citing NTTA comments made in WC Docket No. 10-90, filed Oct. 23, 2023).

³⁹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10000-01, para. 38.

⁴⁰ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10000-02, paras. 38-40.

⁴¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10001-02, para. 40.

should allocate support among the mobile participants in the Alaska Connect Fund⁴² and “how to provide sufficient support amounts to achieve the goals of encouraging secure mobile service deployment, while ensuring prudent use of universal service funds.”⁴³

18. The current support budget for fixed carriers in Alaska is \$82.8 million per year, which includes the combined budget for frozen fixed service in the *Alaska Plan Order*, the *ACS Order*, and the two Alaska recipients of A-CAM support.⁴⁴ For mobile recipients, the *Alaska Plan Order* froze mobile support at 2011 levels⁴⁵ in exchange for improved mobile services in Alaska, amounting to \$739 million (or \$73.9 million annually) in frozen support to the eight mobile providers of the Alaska Plan over a ten-year period.⁴⁶ In seeking comment on the budget, we observed in the *Alaska Connect Fund Notice* that mobile support levels in the Alaska Plan were set by the identical support rule, which based support for mobile competitive ETCs on the costs of wireline voice providers.⁴⁷

19. Many commenters supported an adjusted budget based on the inflationary pressures felt throughout Alaska since the current high-cost support mechanisms began.⁴⁸ In ATA’s request to renew the Alaska Plan for another 10 years, it asks for an increase in support to reflect an inflationary adjustment since the beginning of the Alaska Plan, as well as an annual budget update.⁴⁹ ATA provides examples of the increase in costs that providers have faced to deploy and maintain their networks during the course of the Alaska Plan and argues that an inflationary increase is necessary and appropriate to adjust to the increase in costs.⁵⁰ Alaska Communications points out that frozen support, calculated based on the embedded costs of a voice-only network, bears no relationship to the costs of deploying high-speed broadband networks.⁵¹ Copper Valley Wireless notes that its wireless costs have increased by 141% since the start of the Alaska Plan.⁵² GCI Communication Corp. (GCI) has also submitted a cost study to

⁴² *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026-27, para. 98.

⁴³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10028, para. 102.

⁴⁴ Based on the Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2023, Updated 2023 High-Cost Claims for Alaska, rate-of-return and price cap providers received \$82.8 million from the relevant programs in 2023. Universal Service Administrative Co., Universal Service Monitoring Report (2023), <https://docs.fcc.gov/public/attachments/DOC-401534A1.xlsx>.

⁴⁵ *Alaska Plan Order*, 31 FCC Rcd at 10160, para. 68 (“Because the Mobility Fund Phase II was not operational by June 30, 2014, the total amount of support going to competitive ETCs subject to the delayed phase down has remained at the level received at the end of 2011.”).

⁴⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026-27, para. 98.

⁴⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026-27, paras. 98-99 & n.296; *USF/ICC Transformation Order*, 26 FCC Rcd at 17827-29, paras. 502-07.

⁴⁸ See AKPIRG Comments at 3 (urging that future support account for inflation), and ACS Comments at 12 (noting that inflation has significantly eroded support); ACS Reply at 8; APT Comments at 11 and 21 (holding support steady in an inflationary environment “will significantly weaken the financial position of service providers over time. As service providers become less financially sound, their costs of debt and equity rise, furthering economic difficulties.”); ARIC Comments at 8; NTCA Comments at 7-8; WTA – Advocates for Rural Broadband Comments at 3 (WTA Comments); ARCC July 12, 2024 *Ex Parte* at 3; ATA Comments at 13-14.

⁴⁹ ATA Petition at 17-19; ATA Comments at 27; see also ATA Reply at 12; WTA Comments at 3; NTCA Comments at 7-8; NTCA Reply at 3-4.

⁵⁰ ATA Comments at 11-14.

⁵¹ Letter from Genevieve Morelli, Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 1 (filed Apr. 18, 2024) (ACS Apr. 18, 2024 *Ex Parte*).

⁵² See Letter from Jeffery H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 2 (filed May 3, 2024) (ARCC May 3, 2024 *Ex Parte*).

demonstrate that 5G-NR coverage to all Broadband Serviceable Locations (BSLs) in Alaska will require far more funding than the support currently disbursed pursuant to the Alaska Plan.⁵³

20. Based on our careful consideration of the record, we conclude that increasing support for both fixed and mobile services is warranted to better align support with anticipated increased network speeds that will be supported under the Alaska Connect Fund. For fixed service, as of 2029, we set a speed goal of 100/20 Mbps, which calls for an increase in support. We do not change fixed service requirements now, and in setting a speed goal, we recognize 100/20 Mbps may not be feasible everywhere even with available government funding, thus making it necessary to provide flexibility to support lower speeds where 100/20 Mbps is not feasible. Between now and the end of 2028, due to BEAD commitments and commitments from other broadband infrastructure funding, fixed providers will begin to build networks that meet higher service levels and may even begin providing service that meets higher service levels. In addition, there are non-BEAD eligible locations served under current high-cost programs that will benefit from this increase in support due to need to maintain these higher service levels.⁵⁴ To provide a smooth ramp toward the provision of higher speed services with higher operating costs we raise support levels now to support those costs.⁵⁵

21. Likewise, for mobile service, we increase support levels due to the higher service goals under the Alaska Connect Fund. Providers in single-support areas⁵⁶—which we anticipate will be a substantial majority of the support areas—are expected to deploy 5G-NR throughout these areas, reaching 5G-NR at 35/3 Mbps, where technically and financially feasible, by December 31, 2034. Mobile providers can begin making improvements toward this end immediately, even as they move towards their final commitments under the Alaska Plan. The Alaska Plan sought to have 4G LTE at 10/1 Mbps deployed by December 31, 2026,⁵⁷ and some providers have committed to improvements beyond that standard. We do not alter these commitments, but improvements exceeding an Alaska Plan provider's final commitments will count towards meeting its lower commitments. For example, where a provider deploys 5G-NR before the end of the Alaska Plan, it can count towards the Alaska Plan provider's 4G LTE or lower technology commitments (but we note that providers still must meet the minimum speed requirements in their Alaska Plan commitments); similarly, if a provider deploys higher speeds as it

⁵³ Brattle Group, Alaska 5G Cost Model (July 1, 2024), *attached to* Letter from Annick Banoun, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (filed July 3, 2024) (GCI Jul. 3, 2024 *Ex Parte*); Brattle Group, Alaska 5G Cost Model (October 15, 2024) at 4 (“The Alaska 5G Cost Model estimates the cost of providing 5G service to all broadband serviceable locations (BSLs) within the state of Alaska”), *attached to* Letter from Annick Banoun, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (filed Oct. 15, 2024) (GCI Oct. 15, 2024 *Ex Parte*); *see also* Letter from John Nakahata et al., Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (Sept. 24, 2024) (GCI Sept. 24, 2024 *Ex Parte*) (discussing the cost model and buildout challenges); Letter from John Nakahata et al., Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (Oct. 23, 2024) (GCI Oct. 23, 2024 *Ex Parte*). Notably, while the mobile portion of this Order—Section III.D., *infra*—strives for greater mobile coverage, the Order does not require covering every BSL and can account for existing infrastructure where providers seek lesser commitments. *See infra* Section III.D.3. (Additional Public Interest Obligations).

⁵⁴ Based on HUBB deployment data of December 31, 2023, there are over 17,500 locations reported with speeds of 100/20 Mbps or higher. None of those locations is eligible for BEAD funding.

⁵⁵ We also recognize that in some instances we will be providing support to fixed carriers which ultimately may not be awarded BEAD funding in their study area or a portion of their study area, and in those cases, support will be phased down starting in 2029. *See infra* Section III.C.3. (Phased Down Support). We find the administrative simplicity of raising payments across the board outweighs the difficulties of attempting to determine what areas will be awarded BEAD funding in advance. Moreover, such funding will be effectively eliminated in the first transition payment made in 2029.

⁵⁶ *See infra* Section III.D.2.a.

⁵⁷ *See Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

works toward Alaska Connect Fund obligations, those can count toward its lower speed commitments under the Alaska Plan. Because we anticipate that mobile providers will begin working towards these higher service goals immediately where technically and financially feasible, we provide commensurate support to achieve those ends.

22. While we increase the support amounts, we decline to adjust the budget or support amounts in Alaska in response to inflationary pressures. While increases in costs for equipment, transportation, fuel for equipment, and staff may well have grown beyond those predicted at the time current support mechanisms were initiated, those same pressures are felt elsewhere. Non-Alaska A-CAM carriers have not received increases for inflation (i.e. we did not adjust the model inputs for Enhanced A-CAM to account for inflation or otherwise increase support for carriers staying on A-CAM).⁵⁸ Other carriers receiving frozen support, similar to ACS, were then put on model-based support or subject to a competitive mechanism (e.g. price cap carriers, Puerto Rico Telephone Company, and Viya).⁵⁹ Further, the Commission has been reluctant to adjust support for inflation in other contexts, such as our recent order regarding rates for incarcerated persons.⁶⁰

23. For both fixed and wireless services, we direct the Universal Service Administrative Company (USAC or the Administrator) to make a one-time 30% adjustment of current support amounts for recipients of USF high-cost support in Alaska, to begin January 1, 2025. We find this increase in support is sufficient to meet the higher service speeds under the ACF, while also ensuring prudent use of universal service funds. Given that our rationale for increasing support is not inflation-based, we decline to make an adjustment for inflation to determine the increased support amount.

24. The amount of fixed Alaska Plan, *ACS Order*, and A-CAM high-cost support disbursed in Alaska in 2025, noted as \$82.8 million annually above, adjusted 30%, will be approximately \$107.6 million annually through December 2028.⁶¹ The 30% increase for wireless service results in a total budget of approximately \$96 million annually. While we increase mobile support for Alaska providers, at this time, we decline to provide a 30% increase to the \$162,270,272 otherwise allocated to the unserved areas mobile reverse auction.⁶² There is no support in the record for an increase to this amount.

⁵⁸ See *Enhanced A-CAM Order*, 38 FCC Rcd at 7066-68, paras. 60-66.

⁵⁹ See *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9131-32, para. 35 (2019) (*2019 PR/USVI Stage 2 Order*).

⁶⁰ 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 Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-74, at 68, para. 129 (rel Jul. 22, 2024).

⁶¹ While current Alaska A-CAM carriers' support will not be extended beyond the current 2028 support term ending date, it will be adjusted until that time. Below, for Fixed ACF, we adopt a budget of \$107.6 million annually, thereby keeping the overall annual support for fixed services the same through 2034 but delegating to WCB authority to determine, after the opportunity for public notice and comment, whether any further adjustment, one-time or annual, is appropriate prior to the beginning of Fixed ACF. See *infra* Section III.C.2. (Fixed Support).

⁶² *Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106. The \$162 million figure is based on the amount of funds that would be in the reverse auction fund for "unserved areas" by December 31, 2026. The *Alaska Plan Order* redistributed funds that were going to nonremote areas and ineligible providers and, after shoring up some of the support to fixed providers under the Alaska Plan, reallocated those funds for use in unserved areas with distribution via reverse auction rules. See *id.* at 10173-74, para. 106. Nonremote support to competitive ETCs and AT&T/Dobson funds were annually phased down and, correspondingly, annually phased in to the reverse auction fund. See *id.* at 10171, 10173-74, paras. 99, 106. Funds that were being allocated to Matanuska Wireless were not phased down, making its full funds annually distributed to the reverse auction fund. See *id.* at 10174, para. 106 n.205 & 207. The "unserved areas" that were to be eligible for the reverse auction were defined by the Alaska Plan Order as "those census blocks where less than 15% of the population within the census block was within any mobile

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Moreover, historically competitive mechanisms have resulted in support amounts below the allocated budget, ensuring a more efficient use of limited funding.⁶³

25. Given the increased support amount we are providing, and in recognition of the value of certainty and predictability, we decline to make annual increases for inflation or any other reasons. As the Commission explained in the *Enhanced A-CAM Order* when rejecting annual increases for inflation, “[i]nflation adjustments would undermine the benefits of budgetary certainty provided by fixed, model-based support, including the ability to control the future impact of the mechanism on the contribution factor.”⁶⁴ Therefore, we find that annual budgetary certainty is paramount to the unpredictability of an annual adjustment, and we decline to make annual increases for inflation or any other reasons. However, we direct WCB to continue to monitor support levels under the Alaska Connect Fund to ensure they are furthering universal service goals in Alaska.

C. ALASKA CONNECT FUND FOR FIXED PROVIDERS

26. The goal of the Alaska Connect Fund for fixed services is to encourage and sustain the availability of affordable voice and broadband services to all Alaskans. Adopting a budget and the framework for two phases of the Alaska Connect Fund for fixed services will first, in ACF Transition, provide the certainty of continued USF high-cost support for Alaska carriers while new networks are constructed and will, with Fixed ACF, establish a mechanism to fund those networks and existing ones for a period thereafter. We anticipate that the broadband deployment already completed with USF funding, as well as the buildout that will occur under BEAD and other federal and state programs, will result in making broadband available to all or almost all broadband serviceable locations in Alaska. As such, ACF Transition and Fixed ACF will prioritize support for ongoing maintenance and operations to complement federal support directed for building infrastructure and new deployment. Nonetheless, as explained below, in the event that some areas are left unserved, we maintain the flexibility for Fixed ACF to address these areas, and we delegate to the WCB the authority to consider the needs of any such areas.

27. At the outset, we address the applicability of the Broadband DATA Act, which requires that, after the creation of the Broadband Serviceable Location Fabric and Broadband Maps, the Commission use those data “when making any new award of funding with respect to the deployment of broadband internet access.”⁶⁵ ACF Transition is an extension of existing USF support and related obligations and is only supporting already-authorized broadband deployment. As the purpose of the ACF Transition support is to sustain existing networks and authorized obligations, we conclude it is not a new award of funding and does not trigger the requirements of the Broadband DATA Act.⁶⁶ At the same time,

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 carrier’s coverage area.” *Id.* at 10174, para. 106. *See also Alaska Connect Fund Notice*, 38 FCC Rcd at 10013, para. 65 n.203.

⁶³ *See Connect America Fund, et. al.*, WC Docket Nos. 10-90, et. al. 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5975, para. 79 (2016) (CAF II Auction Order) (establishing budget of \$215 million in annual support for a 10 year support term); *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced*; FCC Form 683 Due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (WTB and WCB Aug. 28, 2018) (noting the award of \$1.49 billion in 10 year support, beyond the \$170.4 million total allocated through New York’s Broadband Program); *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 689-90, para. 8 (2020) (*RDOF Order*) (establishing budget of \$20.4 billion in support for RDOF); *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*; FCC Form 683 Due January 29, 2021, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888 (WCB and OEA 2020) (noting total winning bids in Auction 904 of \$9.3 billion).

⁶⁴ *Enhanced A-CAM Order*, 38 FCC Rcd at 7068, para. 65.

⁶⁵ 47 U.S.C. § 642(c)(2)(B).

⁶⁶ *See The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund*, WC Docket Nos. 18-143 and 10-90, Report and Order and Order on Review, 38 FCC Rcd 3894, 3904, para. 30, n. 72, 73 (2023)

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the framework we adopt for Fixed ACF likewise prioritizes support for maintaining and sustaining existing (including networks that are in the process of and will be deployed under BEAD and other federal funding) voice and broadband networks. However, since we delegate, below, to WCB the responsibility to complete certain requirements of Fixed ACF, to the extent that any Fixed ACF support is awarded or authorized for the deployment of broadband networks, pursuant to that delegated authority, Commission staff shall use the National Broadband Map and its constituent parts (Broadband Serviceable Location Fabric and fixed-broadband availability data collected as part of the Broadband Data Collection), and Broadband Funding Map.

1. Alaska Connect Fund Transition

28. We initiate the ACF Transition by increasing annual support amounts, for reasons discussed above,⁶⁷ and extending certain existing Alaska carrier USF support terms. During this ACF Transition, we align the support terms for current recipients of fixed services support in Alaska so that all support terms during the ACF Transition end in 2028. Thus, ACS's support term is extended from the end of 2025 to 2028, the support term for all Alaska Plan carriers is extended from the end of 2026 to the end of 2028, and the support term for the two Alaska A-CAM I carriers continues to the end of 2028. A single, harmonized end date for current high-cost fixed support programs in Alaska is necessary: (1) to allow time for award of funding through BEAD and other infrastructure projects; (2) to holistically assess the funding landscape in Alaska for all service providers and consumers after these funds are awarded; (3) to avoid duplicate support; and (4) to ease the administrative burden of coordinating provider obligations and disbursements going forward. All carriers continuing to receive support in ACF Transition remain subject to their current public interest obligations, including deployment obligations and performance testing, and must maintain service through the end of ACF Transition on December 31, 2028.

29. *Support Terms.* We establish a uniform conclusion date of December 31, 2028 for the ACF Transition support terms of all current recipients of high-cost fixed services support in Alaska to provide certainty and enable a smooth transition to Fixed ACF. Currently, the obligations and support conclude for ACS in 2025, the Alaska Plan in 2026, and A-CAM in 2028. Support recipients of these programs have public service obligations tailored to the specific programs through which they are receiving support, but these disparate support timelines complicate the initiation of a new, unified support program for Alaska.⁶⁸ Commenters generally agreed that a single high-cost program for Alaska would be desirable, although they did not provide suggestions for aligning the different existing timelines.⁶⁹ Several commenters emphasized the need for adopting solutions for Alaska support as soon as practical.⁷⁰ In its petition, ATA suggested a new support structure should be adopted before the current programs conclude.⁷¹ Additionally, the ABO noted that high-cost support is needed to provide both sustainability

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(*PR/USVI Transitional Support Order*) (describing transitional support as not for “the deployment of broadband Internet access service” but instead for the hardening of networks” and emphasizing the establishment of a short-term, “transitional” support mechanism).

⁶⁷ See *supra* Section III.B. (Budget).

⁶⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 9997-98, para. 31 (inquiring about a unified support program for high-cost support in Alaska).

⁶⁹ ACS Comments at 3; ARIC Comments at 5 (“All support mechanisms should be rolled into the Alaska Connect Fund and all carriers should be welcomed to participate”); TAC Comments at 4.

⁷⁰ ACS Comments at 12, ACS Reply at 2-3, and ACS *Ex Parte* Oct. 2023; ABO Comments at 1; TAC Comments at 4 (“but only after the ABO has announced [BEAD] awards and it is known which communities will have new fiber middle mile access.”).

⁷¹ ATA Petition at 21-22; ATA Comments at 3-4.

and certainty as well as supporting affordability during the period while the BEAD Program is implemented.⁷²

30. We agree with commenters that an extension of current support will provide certainty for current support recipients and will ensure continuity of service for Alaskan consumers. We also find that establishing clear timelines both for the availability of current support streams and for a support mechanism to be adopted after BEAD funding is awarded will best support the Commission's goals in Alaska as well as support carriers providing service in Alaska in planning projects and expenditures for the next several years.⁷³ Finally, we find that a uniform support term (until the end of 2028) is appropriate because it allows all high-cost support programs in Alaska to reach their end at the same time, thereby reducing complexity and uncertainty that could arise in the absence of a uniform date.

31. *Accountability and Oversight.* During the ACF Transition, support recipients must continue to meet all public interest requirements established for the program from which they have been receiving funds, including completing any buildout obligations at the required performance levels by the dates previously established and meeting all other existing public interest obligations.⁷⁴ All ACF Transition support recipients will remain obligated to make certifications and filings as required under current rules and must adhere to current record retention requirements.⁷⁵ Carriers must continue any established performance testing.⁷⁶ Given that BEAD and other federal programs will support broadband construction and that support has not yet been awarded, we will not require broadband deployment beyond existing commitments as a condition of receiving support for fixed services during the ACF Transition.

32. We emphasize the ACF Transition is intended to provide a smooth transition to a new support mechanism and in no way relieves carriers of their existing obligations. As noted above, A-CAM carriers in Alaska, Alaska Plan carriers, and ACS will be subject to support recovery for failure to meet their deployment milestones as provided under our existing rules.⁷⁷ Similarly, carriers that receive support during ACF Transition will be subject to recovery of support for failure to meet performance testing standards both under their existing programs and on an annual basis after the original end date of their current programs. Thus, A-CAM carriers will see no change in their performance testing obligations, as those obligations already extend through 2028. However, ACS and Alaska Plan carriers will be subject to performance testing on existing deployment on an annual basis through December 31, 2028 which is after the end of their current programs. For example, an Alaska Plan carrier receiving support during ACF Transition will be subject to support recovery if it fails to meet its performance

⁷² ABO Comments at 1.

⁷³ APT Comments at 11-12; ACS Comments at 12 ("It is vital for business planning purposes for Alaska Communications to know as soon as possible the support program it will be operating under beginning in January 2026.").

⁷⁴ We note that some carrier performance plans have been adjusted since the beginning of the Alaska Plan. *See, e.g.,* Wireline Competition Bureau Announces Performance Obligations For Rate-Of-Return Alaska Plan Recipients After the Midterm Review, Public Notice, 36 FCC Rcd 18171 (WCB 2021). All Alaska Plan recipients will be expected to meet the requirements of the most recent version of their performance plan as of the date of release of this. *Alaska Plan Order*, 31 FCC Rcd at 10154, para. 45; *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, DA 16-1425, Public Notice, WC Docket 10-90, 16-271 (WCB Dec. 21, 2016).

⁷⁵ *See* 47 CFR §§ 54.313, 54.320. The requirement of 54.313(f)(3) will be limited after December 31, 2026, as revised in Appendix A below. Specifically, Alaska Plan recipients will not be required to certify that they have upgraded their system due to the new availability of commercial backhaul.

⁷⁶ *See* 47 CFR § 54.313(a)(6).

⁷⁷ *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-52.

testing standards at the end of 2026.⁷⁸ In addition, that same carrier will be subject to support recovery if it fails to meet performance testing standards at the end of 2028. Carriers will also be required to continue the filing of middle-mile maps and broadband service reporting.⁷⁹ Carriers that were only obligated to maintain service under the Alaska Plan will continue to be subject to biennial review.⁸⁰

2. Alaska Connect Fund - Fixed Services

33. With Fixed ACF beginning in January 2029, we continue targeted Alaska mechanisms that provide predictability for continued USF high-cost support through 2034 and account for existing and new broadband deployment funding programs. Current USF programs combined with BEAD and other federal and state broadband funding should together result in broadband deployment to all or almost all unserved or underserved broadband serviceable locations.⁸¹ Fixed ACF is intended to be a technology neutral program and to complement network deployment funding by providing operational and maintenance support for carriers that have been or will be awarded federal or state government infrastructure support for the deployment of voice and broadband service in Alaska. We do this to help sustain these networks into the future and bring Alaska consumers closer to enjoying the same modern telecommunications as those available to consumers in the rest of the country.

34. As discussed in the *Alaska Connect Fund Notice*, there have been and continue to be significant changes to the broadband landscape in Alaska.⁸² Specifically, over \$1 billion in federal BEAD funding will be allocated to providers in Alaska, which has the potential to change the landscape of advanced telecommunications service in Alaska dramatically.⁸³ The Commission would not be meeting its responsibilities as stewards of the Universal Service Fund if we allocated support to specific carriers without considering the implications of BEAD awards, as well as other federal broadband funding. We agree with NTCA that support provided through the Alaska Connect Fund should be informed by and build upon the progress of previous support mechanisms and focus on keeping services available to the

⁷⁸ If an Alaska Plan carrier fails to meet its performance testing obligations at the end of 2026, it may either pay the required support recovery or obtain a statistically valid sample for an additional year of testing. *See Connect America Fund Order*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (Performance Measures Order). Support recovery will then be determined based on the year of testing with the statistically valid sample. For the years 2027 and 2028, support recovery will be calculated based on testing results at the end of 2028. If the carrier was already testing with a statistically valid sample, then the 2028 results will be used to determine compliance and support recovery. Alternatively, if a carrier is not using a statistically valid sample and is not in compliance with performance testing requirements at the end of 2028, it can either pay the required support recovery or request a statistically valid sample and perform another year of testing before support recovery is calculated. For ACS, the support recovery are similar but with the current term ending in 2025. *See ACS Order*, 31 FCC Rcd at 12102-3, para. 53 (discussing reductions in support for non-compliance); *see also* Connect America Fund, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*).

⁷⁹ *See* 47 CFR §§ 54.316, 54.320(d) (Compliance and recordkeeping for the high-cost program).

⁸⁰ *See Alaska Plan Order*, 31 FCC Rcd at 10141, n.14.

⁸¹ The ABO states that applicants receiving Alaska BEAD funding will be required to begin providing services to customers within four years from the grant agreement date. *See* October ABO Draft NOFO at 12; ABO Initial Proposal Volume 2 at 24.

⁸² *Alaska Connect Fund Notice*, 38 FCC Rcd at 9987-89, paras. 8-11.

⁸³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 9989, para. 11; *see also* October ABO Draft NOFO; Internet for All, Funding by State/Territory, https://www.internetforall.gov/funding-recipients?state=AK&form_build_id=form-e21qdV4nnMiavIMGmQBv_TrDyFjQMdcHz5FsJrYyicQ&form_id=ntia_interactive_map_state_and_program_selection (last visited Aug. 8, 2024) (providing funding information for the BEAD and other federal programs: \$1,017,139,672.42, total allocated for BEAD; \$6,199,569.64 total awarded for the Digital Equity Act Programs; \$448,098,971.90 total awarded for Tribal Broadband Connectivity Program; \$2,976,837.00, total awarded for Connecting Minority Communities Pilot Program; \$88,896,493.83, total awarded for Enabling Middle Mile Broadband Infrastructure Program).

consumer,⁸⁴ and therefore we must take into account BEAD funding awards, which are expected to be made in fall next year.⁸⁵ As such, while we determine a total budget amount of annual support for Fixed ACF, we delegate to WCB the authority to determine, after an opportunity for public notice and comment, how Fixed ACF support shall be allocated among eligible locations.⁸⁶ We direct WCB to provide further guidance to carriers on the timing and process of electing Fixed ACF support⁸⁷ in advance of the start of Fixed ACF support, taking into consideration BEAD and any other federal or state broadband funding allocations.

35. *Budget.* We adopt an annual budget of \$107.6 million for Fixed ACF, approximately the same annual amount being authorized during the ACF Transition.⁸⁸ We find that maintaining the same budget and adopting the Fixed ACF budget now provides entities interested in pursuing network deployment funding, through BEAD or other federal or state programs with certainty that USF high-cost support will continue to sustain the operation of the networks that carriers receive funding to build. ATA and other commenters encouraged the Commission to provide these assurances now, ahead of BEAD funding awards, and we find a stated budget amount achieves that goal.⁸⁹ During Fixed ACF, our goal is to support the sustainability of government funded networks, which we expect will provide speeds of at least 100/20 Mbps, which is a higher speed standard than has been required to date for carriers currently receiving high-cost support in Alaska. The operating costs of supporting a higher capacity network, especially after accounting for current middle-mile costs in Alaska, are likely materially more expensive than lesser bandwidth services, and we find that maintaining the same increased budget as the ACF Transition, as discussed above, allows carriers to plan for operation at that level. Accordingly, we find that the budget we adopt is sufficient to help advance the goal of sustaining service at reasonably comparable rates and provide predictability while being mindful of the burdens on payers into the Universal Service Fund. Nevertheless, we allow for flexibility in specific situations, as explained below, to support networks that cannot provide service at 100/20 Mbps. We decline to further adjust the budget at this time.⁹⁰ Fixed ACF support will prioritize supporting the operations and maintenance of already-constructed networks over additional deployment, and it is premature to determine if any additional adjustments are warranted. We expect that, with the delegation of authority we provide to WCB below, support will be carefully allocated to achieve the goals of Fixed ACF. Nonetheless, we delegate authority to WCB to determine, after the opportunity for public notice and comment, whether any further budget adjustment, one-time or annual, is appropriate prior to the beginning of Fixed ACF. Specifically, WCB has the authority to increase the Fixed ACF budget by up to 15% of the annual budget on a one-time basis or annually if WCB determines that such an increase is in the public interest.

36. *Support Term and Timing.* We adopt a six-year term of support for Fixed ACF, which will begin January 1, 2029 and conclude on December 31, 2034. Our action today strikes the appropriate

⁸⁴ NTCA Reply at 2-3.

⁸⁵ October ABO Draft NOFO at 11-12 (estimating BEAD awards to announced in fall 2025); *see also* ABO Initial Proposal Volume 2.

⁸⁶ *See infra* para. 43 (Fixed ACF Eligible Locations and Support Amounts).

⁸⁷ *See infra* para. 51 (Fixed ACF Participation Process).

⁸⁸ The annual Fixed ACF budget will be the approximately same as the annual total amount authorized for all recipients of ACF Transition. *See supra* Section III.C.1. (discussing ACF Transition budget) and III.B. (discussing budget generally).

⁸⁹ *See* ATA Comments at 4; NTCA Reply at 4-5; APT Comments at 11-12; WTA Comments at 2.

⁹⁰ *See* ATA Comments at 13 (commenting that the Alaska Connect Fund budget should be updated annually for inflation). *See also supra* Section III.B. (discussing budget and the Commission's decision to not adjust for inflation in the *Enhanced A-CAM* Order).

balance among providing predictability of support,⁹¹ our obligation to use support effectively,⁹² and the Congressional requirement to coordinate with other federal agencies that administer broadband deployment programs.⁹³ ATA proposed that the Commission provide support through 2034,⁹⁴ and commenters generally agree on a 10-year term of support.⁹⁵ The Commission has consistently provided high-cost support in 10-year terms, particularly in Alaska due to its unique work season, extended timelines, and generalized logistical challenges, and we find the six-year term for Fixed ACF together with the four-year term of ACF Transition is an appropriate timeframe in this context.⁹⁶ As explained above, extending support for ACF Transition through the end of 2028 allows all existing high-cost support programs in Alaska to reach their natural end at the same time.⁹⁷ Additionally, by January 1, 2029, we will have the benefit of knowing how BEAD funding in Alaska is awarded, including which providers will be building in which areas and if any areas are being left unserved.⁹⁸ We agree with commenters that argue it is important for the Commission to consider the allocation of BEAD funding when extending USF support.⁹⁹ The beginning of 2029 roughly corresponds to the expected timeline for when BEAD awardees will have deployed or will be finishing construction of the networks funded by that program.¹⁰⁰ Additionally, USF high-cost support recipients in Alaska will have already completed their existing deployment obligations. This information will allow WCB to allocate Fixed ACF support so as to avoid duplicative deployment funding while identifying any areas that are not yet funded. We expect

⁹¹ See NTCA Reply at 3-4.

⁹² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, para. 57.

⁹³ See The Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, 134 Stat. 3214, Div. FF, tit. IX, § 904 (2020), codified at 47 U.S.C §1308 et seq. (BICA); 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-pactbroadband-funding-deployment>; see also *FCC, NTIA, USDA, and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding*, News Release, DOC-383280A1 (May 12, 2022), <https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement> (last visited July 14, 2023) (*FCC, NTIA, USDA and Treasury Interagency Agreement Press Release*); see also *Memorandum of Understanding Regarding Information Sharing*, DOC-38278A1 (May 9, 2022), <https://docs.fcc.gov/public/attachments/DOC-383278A1.pdf> (last visited Aug. 8, 2023). This MOU was renewed in the Summer of 2024. See FCC, USDA, NTIA, Dep't of Treasury, *Memorandum of Understanding* (May 9, 2024) <https://www.fcc.gov/document/memorandum-understanding-between-fcc-ntia-usda-and-treasury>.

⁹⁴ ATA Petition at 2-3; ATA Comments at 18-20.

⁹⁵ GCI Reply at 7; ACS Comments at 27; ARCC Comments at 19; ARCC Reply at 4; NTCA Comments; WTA Comments at 2; ARCC July 2024 *Ex Parte* at 5.

⁹⁶ See, e.g., *ACS Order*, 31 FCC Rcd at 12092-12093, paras. 22-24; *Alaska Plan Order* at 10150, paras. 32-33. See also APT Comments at 16-17 (outlining the various unique challenges in Alaska including permitting and seasonal work schedules).

⁹⁷ See *supra* Section III.C.1. (discussing timing of ACF Transition support term).

⁹⁸ Alaska Broadband Office, Alaska Broadband Grant Program Timeline, <https://www.commerce.alaska.gov/web/abo/ProgramOverviewsandTimelines.aspx> (last visited July 12, 2024) (showing awards made in April 2025).

⁹⁹ ARCC Reply at 4; NTCA Comments at 5.

¹⁰⁰ See October ABO Draft NOFO at 12 (stating the ABO expects to submit grant awards for NTIA approval around July 2025); Broadband Equity, Access, and Deployment Program, Notice of Funding Opportunity at 18, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (BEAD NOFO) (“As established in Section 60102(h)(4)(C) of the Infrastructure Act, subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband service within the project area *not later than four years* after the date on which the subgrantee receives the subgrant from the Eligible Entity.”) (emphasis added).

the majority of government funded networks in Alaska through currently existing programs will be built and available for consumer use by 2029, and we therefore find it appropriate to provide USF support at that time for operations and ongoing maintenance. Accordingly, we adopt this term now to provide clarity and predictability for carriers submitting applications for infrastructure support through BEAD or participating in other broadband infrastructure programs, and to allow carriers to proceed with confidence in planning and construction, knowing that USF high-cost support will continue to be available once their networks are constructed.

37. *Eligible Carriers.* In the *Alaska Connect Fund Notice*, we sought comment on eligibility for participation in the program and information about eligible telecommunications carriers (ETC) in Alaska.¹⁰¹ In its comments, ARCC introduced the concept of an Alaska Broadband Checklist, outlining several proposed eligibility and carrier requirements.¹⁰² ARCC also encouraged recognition of the varied and unique circumstances across the state of Alaska.¹⁰³ Some commenters suggested only carriers currently receiving high-cost support in Alaska should be eligible for ACF support,¹⁰⁴ while other commenters encouraged us to include new participants and carriers that have not previously received high-cost support in Alaska to date.¹⁰⁵

38. We direct WCB to make Fixed ACF support available for fixed services to ETCs in Alaska that receive or are awarded funding from federal or state government support programs to deploy networks capable of providing voice and broadband internet access service meeting the Commission's public interest obligations to eligible locations. For example, a carrier that received funding for broadband deployment through programs such as, but not limited to, USF High-Cost, BEAD, the Department of Agriculture's ReConnect program, or the NTIA's Tribal Broadband Connectivity Program to deploy a network capable of providing broadband internet access service may be eligible for Fixed ACF support. In taking this approach, we agree with the commenters advocating to include new participants and carriers that have not received high-cost support in Alaska to date. We recognize there likely are or will be new providers in Alaskan communities due to other federal infrastructure funding.¹⁰⁶ We find that providing the opportunity for these new participants in Alaska furthers our goal of making networks in Alaska sustainable into the future. We direct WCB to use the Broadband Funding Map to assist in determining eligible carriers.¹⁰⁷ Subject to the limitations discussed below, we delegate authority to WCB to consider how to allocate Fixed ACF support among the eligible fixed service carriers in Alaska. We also delegate authority to WCB to determine, after opportunity for public notice and comment, whether additional financial or other requirements for new entrants in Fixed ACF would be in the public interest.¹⁰⁸

¹⁰¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 9997-99, paras. 31-32.

¹⁰² ARCC Comments at 10-13 (identifying several requirements for ACF eligibility including: voice access, equal access to interexchange services, access to emergency services, power backup, broadband labels, mapping reporting, performance testing, reliability attestations, cybersecurity plan, and deconfliction certification).

¹⁰³ ARCC Comments at 6.

¹⁰⁴ ACS Comments at 23; ATA Comments at 9-10; ARCC Comments at 8; APT Reply at 5-6.

¹⁰⁵ NANA Comments at 2; ARIC Comments at 2; AMMA Comments at 2-5; AKPIRG Comments at 3; PD Comments at 1; SpaceX Comments at 2-3; TAC Comments at 3; Quintillion Comments at 3.

¹⁰⁶ See *supra* n.83 (discussion of other federal and state funding); see also *supra* Section III.A. (discussion of ETC requirement).

¹⁰⁷ See Broadband Funding Map, <https://fundingmap.fcc.gov/home>; Funding Map, <https://www.fcc.gov/economics-analytics/funding-map>.

¹⁰⁸ ARCC suggests that new entrants to ACF with no previous operating experience in Alaska should be required to obtain a performance bond for five years. See ARCC Comments at 12.

39. *Intended Use of Support.* Fixed ACF support shall be focused on supporting ongoing operations and maintenance of already-constructed voice and broadband-capable networks. We find that it is not necessary to allocate support for broadband infrastructure at this time given the historic investment of federal funding that has been directed for that purpose through BEAD and other programs and the expectation that this funding will result in planned deployment to all or almost all locations in Alaska.¹⁰⁹ Commenters generally agree that support for ongoing operations and maintenance is essential to complement infrastructure deployment.¹¹⁰ We agree with NTCA that the mission of universal service extends beyond just building infrastructure and that high-cost support serves an important role in keeping services operational once a network is built.¹¹¹ The intended use of support is not strictly for operating expenses (OpEx) as expenditures to maintain a network may be accounted for as capital expenses where appropriate, for instance, expenses incurred to replace network equipment.¹¹²

40. Like recipients of Alaska Plan and model-based support, Fixed ACF recipients may use support anywhere in their network to maintain their ability to offer service at the public interest standards in high-cost areas and will not be limited to using support only for last-mile infrastructure. For example, a recipient that operates its own middle-mile networks may use support for the maintenance and operation of those portions of the network as well. We find that allowing recipients the flexibility to use Fixed ACF support in any area of their network allows high-cost support to be targeted to where it is needed most and to better ensure carriers can meet their public interest obligations. We anticipate that this will also encourage the maintenance and operation of middle-mile networks in Alaska so that they can be utilized economically.¹¹³

41. Fixed ACF recipients, like all other ETCs, remain subject to limitations on the appropriate use of universal service support. The Commission has previously reminded ETCs of their

¹⁰⁹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 9989, para. 11 & n.45 (discussing the funding provided to Alaska in recent years including, over \$1 billion in NTIA BEAD funding, over \$100 million in USDA ReConnect grants, over \$88 million in NTIA Middle-Mile grant, over \$387 million in NTIA Tribal Broadband Connectivity Program grants, and other planning and educational grants to improve broadband connections in Alaska).

¹¹⁰ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 9990, paras. 13-14; ATA Petition at 2-3; ATA Comments at 4 (stating “ACF can provide the sustainable, predictable support needed to maximize the impact of the BEAD and ReConnect programs across fixed and mobile broadband services.”); ATA Reply at 8 (“ACF will play a critical role to sustain service...”); NTCA Comments at 8-9; APT Comments at 4-6 (encouraging operational support to aid with capital expenditures); NTTA Comments at 3-5 (pointing out that tribally owned companies receiving support through other federal funding streams now have buildout obligations that will benefit from ongoing operating support); ABO Comments at 1-2 (ACF will be “crucial complement” to BEAD and is “needed to ensure that broadband access is sustainable after deployment is completed.”); WTA Comments at 5 (stating that carriers need operational support); Quintillion Comments at 6 (encouraging the use of ACF for ongoing sustainability support for BEAD funded projects). See also October ABO Draft NOFO at 15 (requiring applicant to provide evidence that it can sustainably operate the funded network post-construction); ABO Initial Proposal Volume 2 at 23.

¹¹¹ NTCA Comments at 8-9. We agree with NTCA that nothing in the Communications Act “offers any indication that promoting and advancing the mission of universal service is a one-time act, and to the contrary, they make clear that the Commission’s USF mechanisms cannot neglect to provide ongoing support sufficient to achieve these aims going forward.” See *id.* at 9.

¹¹² See *Future of USF Report*, 37 FCC Rcd at 10062, para. 42 (2022); see also *Enhanced A-CAM Order*, 38 FCC Rcd at 7077, para. 89 (2023) (discussing support of ongoing operations at 100/20 Mbps).

¹¹³ Quintillion Comments at 3 (relating ongoing operational support to long-term viability of middle-mile facilities); ATA May 2024 *Ex Parte* (discussing the high transport costs for middle-mile); AMMA Comments at 4 (advocating for middle-mile support to improve affordability of service generally); ARIC Comments at 2 (requesting operating support for middle mile); GCI Comments at 9-10 (discussing refueling process and costs for maintaining backhaul network); WTA Comments at 4 (discussing the costs of middle-mile access).

statutory obligation to use high-cost support only for its intended purposes.¹¹⁴ These same principles apply here. To the extent the Commission or WCB revises the expectations for what constitutes expenditure of support for its intended purposes, recipients participating in Alaska Connect Fund will be subject to those new rules.

42. While we direct Fixed ACF support for maintaining and operating the network, we are cognizant that there may still be a need for deployment funding in Alaska and that any remaining unserved or underserved areas will be identified by 2029. Therefore, we build flexibility into Fixed ACF to address such needs at that time. We delegate authority to WCB to determine, after an opportunity for public notice and comment, whether it is in the public interest to allocate any Fixed ACF support for additional broadband deployment after BEAD and other funding has been awarded, and if so, to determine the amount to be allocated. Should WCB decide that it is in the public interest, we further delegate authority to WCB to determine, after an opportunity for public notice and comment, public interest obligations and a deployment timeline, including interim and final milestones, appropriate for the support provided and the nature of the deployment. While we have considered arguments for allocating high-cost support in Alaska for infrastructure, we find it is premature to do so prior to BEAD funding being awarded. If, however, WCB determines that authorizing support for deployment for Fixed ACF is in the public interest, WCB shall work within the Fixed ACF budget to determine how best to allocate support between operations and deployment.¹¹⁵

43. *Eligible Locations and Support Amounts Per Location.* The Commission delegates authority to WCB to determine, after an opportunity for public comment, which locations are eligible for Fixed ACF support for fixed services and how to allocate Fixed ACF support among eligible locations. WCB shall consider allocating Fixed ACF support based on the remoteness of the location.¹¹⁷ For example, using the June 2023 version of the Fabric, the ABO categorized all broadband serviceable locations in the state of Alaska based on whether they are: high-cost or non-high-cost (for purposes of the BEAD program), and whether they are on the fiber or road system, rural community, or non-community based.¹¹⁸ We expect that Fixed ACF support will be most efficiently spent in non-community locations, High-Cost BSLs, and BSLs that

¹¹⁴ *Alaska Plan Order*, 31 FCC Rcd at 10151, para. 35; *see, e.g., All Universal Service High-Cost Support Recipients are Reminded that Support Must be Used for its Intended Purpose*, WC Docket Nos. 10-90 and 14-58, Public Notice, 30 FCC Rcd 11821 (2015); 47 U.S.C. § 254(e).

¹¹⁵ *See supra* para. 35 (delegating authority to WCB to determine, after the opportunity for public notice and comment, whether any further adjustment, one-time or annual, is appropriate prior to the beginning of ACF Transition).

¹¹⁶ Eligible locations will be determined by the most current Broadband Serviceable Location Fabric dataset at the time of WCB's further guidance.

¹¹⁷ *See* AKPIRG Comments at 3.

¹¹⁸ *See* October ABO Draft NOFO at 4-5, 31 Appendix I – Unserved and Underserved BSLs by Pre-Determined Project Area (identifying 281,536 Broadband Serviceable Locations, explaining the breakdown, and defining key terms); The ABO availability challenge process to determine which locations were served, unserved or underserved was completed in August 2024. *See* Alaska Broadband Office, Program Overviews and Timelines, <https://www.commerce.alaska.gov/web/abo/ProgramOverviewsandTimelines.aspx> (last visited Oct. 7, 2024); *see also* Alaska Broadband Office, In-State Mapping Challenge Preliminary Results, <https://www.commerce.alaska.gov/web/abo/> (last visited Oct. 7, 2024) (providing the disposition of 30,623 challenges); *see also* Alaska Broadband Office, In-State Mapping Challenge Map Preliminary Results and Community Identification, <https://dced.maps.arcgis.com/apps/instant/basic/index.html?appid=ff65666ff18e4c7b98810daf5a7f1004> (last visited Oct. 7, 2024).

are part of a rural community not on a fiber or road system.¹¹⁹ We find that locations that do not fall within those categories are likely to be in the more densely populated areas of Alaska like Anchorage and Fairbanks, where the business case for providing broadband service without subsidies is much stronger. We recognize that some commenters supported the allocation of support on a community basis and others identified community-based projects.¹²⁰ Nonetheless, we find that making a determination of eligible locations, ahead of BEAD awards, is premature. Therefore, we delegate authority to WCB to determine, after opportunity for public notice and comment, the eligible locations and how to allocate support among them, and, as explained further below, we delegate to WCB the flexibility to allocate support to carriers that may be providing broadband speeds below 100/20 Mbps. We also direct WCB to avoid duplicate high-cost support by authorizing no more than one carrier to receive Fixed ACF support for fixed services for each eligible location.

44. *Public Interest Obligations.* We adopt general parameters and priorities for the public interest obligations applicable to Fixed ACF recipients. We agree with commenters that reasonable minimum service standards help provide consumers with a level of service that allows for meaningful personal and community engagement, and that this is only increasingly important as we move into further generations.¹²¹ We delegate authority to WCB to determine, after opportunity for public notice and comment, whether any changes are necessary based on the specific determinations that will be made for eligibility and allocation of Fixed ACF eligible areas and support allocation.

45. *Speed.* We adopt a goal of a service speed of at least 100/20 Mbps. The Commission recently increased the definition for advanced service to the provision of broadband service at a speed of 100/20 Mbps, and arrived at this benchmark after taking into consideration, among other things, the speed goals for BEAD, and other federal and state broadband deployment programs.¹²² Commenters argue that Alaska lags behind the rest of the country in higher-speed options specifically because previous support did not prioritize higher speeds.¹²³ Several commenters supported a minimum speed requirement of 100/20 Mbps.¹²⁴ Although ATA supports the speed benchmark generally, it expressed concern about

¹¹⁹ We do not require, nor do we expect, each of these locations to be eligible for Fixed ACF and, in determining eligibility, WCB may consider whether a location is served by a broadband provider that has not received subsidies for that location.

¹²⁰ AKPIRG Comments at 1-2 (supporting determination by community or village); SpaceX Comments at 3 (indicating service to “community locations”); Eutelsat S.A. and WorldVu Satellites Limited Comments at 5 (OneWeb Comments) (discussing a community-based model of service); ATA Reply at 14 (identifying a community-based project in Ketchikan); TAC Comments at 2 (pointing out the community-based authorities granted to Tribal leadership).

¹²¹ SpaceX Reply at 3-4; AMMA Comments at 6.

¹²² See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 22-270, 2024 Section 706 Report, FCC 24-27 at 13-27, paras. 22-51 (Mar. 18, 2024) (2024 Section 706 Report). See also, e.g., BEAD NOFO at 45 (identifying 100/20 Mbps service under Primary Criteria); Nebraska Public Service Commission, Nebraska Broadband Bridge Program, NBBP Guide Program Year 2024 at 2, available at <https://casetext.com/regulation/louisiana-administrative-code/title-4-administration/part-xxi-granting-unserved-municipalities-broadband-opportunities/chapter-4-scoring/section-xxi-405-factors-subject-to-scoring> (last visited Sept. 3, 2024) (requiring eligible projects to provide 100/100 Mbps broadband service or greater); CA Pub. Util. Code § 281(f)(5) (requiring projects funded by California Advanced Services Funds - Broadband Infrastructure Grant Account program to provide minimum service speed of 100/20 Mbps); Colorado Broadband Office, Broadband Deployment Board Grant Award Policy at 17, <https://broadband.colorado.gov/broadband-deployment-board-fund/broadband-fund/apply> (Dec. 8, 2022) (requiring applicants to provide a minimum 100/100 Mbps service speed); Minnesota Border-to-Border Broadband Grant Program, 2023 MN Stat. § 116J.395, Subd.2 Eligible expenditures (requiring broadband service speed of 100/100 Mbps).

¹²³ TAC Comments at 3; ARCC at 17-18.

requiring 100/20 Mbps at all locations.¹²⁵ Additionally, ARCC encouraged the Commission to adopt a policy that considers issues that can arise with oversubscription and how that affects network performance in relation to speed.¹²⁶ While the BEAD program's principal focus is to deploy service with speeds of at least 100/20 Mbps to all locations in the state,¹²⁷ and other broadband deployment programs have the same speed requirement, we recognize and agree with the record that it also is in the public interest to provide flexibility in Alaska to tailor support for locations where, even with government funding, it has not been feasible to achieve 100/20 Mbps service and remains that way after BEAD awards. Therefore, we direct WCB to consider the best ways to meet the goal of 100/20 Mbps broadband internet access service, and we delegate authority to WCB to determine, after an opportunity for notice and comment, where supporting slower broadband internet access speeds is consistent with section 254 of Communications Act and with our goal of providing operational and maintenance support for carriers that have been or will be awarded federal or state government infrastructure support for the deployment of networks capable of providing voice and broadband services in Alaska.

46. *Latency.* We adopt a roundtrip provider network latency goal of 100 ms or less (faster) for Fixed ACF recipients.¹²⁸ We disagree with commenters that argue we should dismiss latency requirements.¹²⁹ Latency standards have been adopted in several successful high-cost programs in Alaska, including the *Alaska Plan Order*, *ACS Order* and *A-CAM Order*, as well as in other geographically remote and non-contiguous areas.¹³⁰ We agree with commenters reporting that latency is an important requirement that helps the Commission gauge the quality of service and ensure that providers meet the modern-day needs of consumers.¹³¹ Commenters also indicate that latency

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¹²⁴ TAC Comments at 3 (stating lower speed requirements prevent Alaska from keeping up with the rest of the country); ACS Comments at 11 (supporting 100/20 Mbps); OneWeb Comments at 5 (stating it can provide 100/20 Mbps); ARIC Comments at 3, 8-9 (encouraging 100/20 Mbps speed requirement); ATA Comments at 9-10 (supporting 100/20 Mbps).

¹²⁵ ATA Comments at 9-10, 21 (indicating 100/20 Mbps is a reasonable target, but that there may be areas where this is currently challenging); ATA Oct. 15, 2024 *Ex Parte* Letter at 1 (urging the Commission to consider the varying circumstances of Alaska providers); *see also* APT Oct. 21, 2024 Comments (concurring with ATA).

¹²⁶ ARCC Comments Attach. 1, Impact of oversubscription ratio on remote Alaska broadband.

¹²⁷ BEAD NOFO at 7.

¹²⁸ *See Connect America Fund*, WC Docket 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5960-61, paras. 28-29 (*CAF Phase II Order and FNPRM*); *see also Connect America Fund, et. al*, WC Docket Nos. 10-90; 14-58; CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3099, 3137, paras. 28, 131 n.281 (*2016 Rate-of-Return Reform Order*); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15068-72, paras. 19-36 (WCB 2013) (*Phase II Service Obligations Order*); *Connect America Fund, et. al*, WC Docket No. 10-90, et. al, Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7103-04, paras. 149-52 (2014) (*April 2014 Connect America Order*). *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 96 (adopting the requirement that ETCs receiving high-cost support offer sufficiently low latency to enable the use of real-time applications, such as VoIP); Infrastructure Act § 60104(c).

¹²⁹ ARIC Comments at 2 (latency requirement is an "unnecessary restraint"); Pacific Dataport Reply at 1 (applying latency requirements is not technology neutral); AMMA Comments at 6-7 (latency requirements are unnecessary in today's market).

¹³⁰ *ACS Order*, 31 FCC Rcd at 12089-90, paras. 12-14; *Alaska Plan Order*, 31 FCC Rcd at 10146-47, paras. 19-20; *Enhanced A-CAM Order*, 38 FCC Rcd at 7057-58, paras. 37-38; *see also PR/USVI Stage 2 Order*, 34 FCC Rcd at 9123-24, para. 26, Table 4 (preference given to carriers meeting 100 ms latency standard).

¹³¹ ARCC Comments at 12 (latency requirement and testing is even more important in Alaska to protecting the investment made in the network); ARCC Reply at 10 (arguing latency requirements are important for meeting the needs of various consumers); AKPIRG Comments at 3 (no exceptions should be allowed to public interest obligations, including latency); SpaceX Reply at 4 (concurring with the establishment of a latency requirement (continued....))

performance has improved substantially in recent years, such that 100 ms or less is generally achievable by all technologies.¹³² Nevertheless, at this stage, we recognize the importance of maintaining flexibility to tailor requirements in Alaska for locations where, even with government funding, the goal of 100 ms or less latency has not been feasible and remains that way after BEAD awards.¹³³ Therefore, we direct WCB to consider the best ways to meet the goal of 100 ms or less latency for Fixed ACF recipients, and we delegate authority to WCB to determine, after an opportunity for notice and comment, whether, and if so where supporting higher (slower) than 100 ms latency may be consistent with section 254 of Communications Act and with our goal of providing operational and maintenance support for carriers that have been or will be awarded federal or state government infrastructure support for the deployment of networks capable of providing voice and broadband services in Alaska. Therefore, Fixed ACF recipients will be required to certify that 95 percent or more of all peak period measurements of network round-trip latency meet the latency standard set for the locations served. Fixed ACF recipients shall conduct their latency network testing consistent with the current requirements for network testing.¹³⁴

47. *Data Usage.* Fixed ACF recipients will be required to offer a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, as was required by the Alaska Plan.¹³⁵ In the *Alaska Connect Fund Notice*, we outlined the different current standards for Alaska high-cost providers and asked about tailoring the minimum data allowance for the Alaska Connect Fund.¹³⁶ ARIC urged the Commission to remove the requirement as it incentivizes providers to set limits low and charge for additional data usage.¹³⁷ Alaska Public Interest Research Group (AKPIRG) suggested we establish caps on data overage charges to limit opportunistic pricing for data.¹³⁸ Under the *USF/ICC Transformation Order* and subsequent orders, ETCs subject to broadband public interest obligations must provide broadband with usage allowances reasonably comparable to those available through comparable offerings in urban areas.¹³⁹ There is no support in the record for holding Fixed ACF recipients to a different standard than other high-cost recipients, and the current standard ensures that carriers must offer a minimum usage of at least the national average. Therefore, Fixed ACF carriers will be required to certify that they offer a minimum usage allowance that reflects the average

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consistent with requirements of NTIA BEAD program); AMMA Comments at 6 (supporting a latency requirement); ACS Reply Comments at 7 (concurring that no exceptions to performance requirements should be allowed, including latency).

¹³² SpaceX Reply at 4-5 (stating that 100 ms is a reasonable latency standard today); OneWeb Comments at 5 (stating OneWeb service plan can deliver 100/20 Mbps at 70 ms); AMMA Comments at 7 (reporting latency for satellite provider in Alaska at 68-96 ms).

¹³³ See SpaceX Reply at 4 (“the Commission should determine a [latency] standard that takes evolving consumer needs and broadband technologies into account . . . developments in satellite broadband may also obviate the need for a satellite backhaul exception in the Alaska Connect Fund, or at least may warrant a change in the high-latency.”).

¹³⁴ See *Performance Measures Order and Performance Measures Reconsideration Order*.

¹³⁵ See *Alaska Plan Order*, 31 FCC Rcd at 10147, paras. 21-23. The *Alaska Plan Order* set the minimum data usage allowance at 150 GB per month; however, that was updated in the *Reasonable Comparability Benchmarks for Alaska PN* to 160 GB per month. *Wireline Competition Bureau Announces Voice and Broadband Reasonable Comparability Benchmarks for Alaska Plan Rate-of-Return Carriers and Alaska Communications Systems and Confirms Minimum Usage Allowance Requirements*, WC Docket Nos. 10-90, 16-271, Public Notice, 32 FCC Rcd 3003 at 3-4 (2017) (*Reasonable Comparability Benchmarks for Alaska PN*).

¹³⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10004, para. 46.

¹³⁷ ARIC Comments at 6.

¹³⁸ AKPIRG Comments at 2; see also TAC Comments at 1.

¹³⁹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17699, para. 99. See 47 CFR §§ 54.308(a), 54.309(a).

usage of a majority of consumers, as annually calculated and published by WCB and Office of Economics and Analytics (OEA).¹⁴⁰

48. *Satellite Backhaul Exception.* In the *Alaska Connect Fund Notice*, we sought comment on the continued need for a satellite backhaul exemption for speed, latency, and data usage standards.¹⁴¹ In the *Alaska Plan Order*, the Commission adopted an exemption from the speed, latency, and data usage standards for carriers that rely only on the use of satellite backhaul to deliver their service. This exemption was based on the premise that relying on satellite was performance-limiting and that satellite could not provide the same speeds as terrestrial backhaul.¹⁴² We decline to adopt a general satellite backhaul exemption from the public interest obligations for Fixed ACF recipients. We agree with commenters stating that satellite-based technologies have evolved sufficiently in the last several years and are no longer “performance-limiting.”¹⁴³ Given the developments in satellite technology, a blanket exemption does not advance the public interest of providing advanced broadband service for all consumers in Alaska.¹⁴⁴ Further, we find that Fixed ACF support provided for the operation and maintenance of service presupposes that the service provided meets the public interest standards set, regardless of backhaul technology. Therefore, we will no longer provide a blanket exemption to meeting the public interest obligations for Fixed ACF recipients that rely exclusively on satellite backhaul to provide service.¹⁴⁵

49. *Alaska Reasonably Comparable Rates—Broadband and Voice.* We require recipients of Fixed ACF support, like all other recipients of USF high-cost support, to provide voice and broadband service at rates that are reasonably comparable to those offered in urban areas and make such certification annually.¹⁴⁶ For voice service, ETCs are required to make an annual certification that the rates for their voice service are in compliance with the reasonable comparability benchmark.¹⁴⁷ For broadband, an ETC has two options for demonstrating that its rates comply with this statutory requirement: certifying compliance with reasonable comparability benchmarks or certifying compliance that it offers the same or

¹⁴⁰ See 47 CFR § 54.308(a)(1). The data usage requirement we adopt is consistent with rules for other programs or funds within high-cost and the 2024 minimum monthly usage allowance is 660 GB. See *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2024 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, DA 23-1172 at 3-4 (2024 Urban Rate Survey); see also *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3099, para. 27 (2016); see OpenVault, Broadband Insights Report, OVBI (3Q21) available at https://openvault.com/wp-content/uploads/2021/11/OVBI_3Q21_Report.pdf (stating that the averages are based on millions of machines).

¹⁴¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10004, para. 47.

¹⁴² *Alaska Plan Order*, 31 FCC Rcd at 10147-48, paras. 24-25.

¹⁴³ SpaceX Reply at 4; AMMA Comments at 7.

¹⁴⁴ ARIC Comments at 9.

¹⁴⁵ As discussed above, we delegate to WCB to determine, after an opportunity for notice and comment, if a higher (slower) latency is consistent with section 254 of Communications Act and with our goal of providing operational and maintenance support for carriers that have been or will be awarded federal or state government infrastructure support for the deployment of networks capable of providing voice and broadband services in Alaska.

¹⁴⁶ In the *USF/ICC Transformation Order*, the Commission required that as a condition of receiving high-cost support, ETCs must offer voice service in supported areas at rates that are reasonably comparable to rates for similar services in urban areas. *USF/Transformation Order*, 26 FCC Rcd at 17693, 1695, 17708, paras. 81, 86, 113. See 47 U.S.C. § 254(b)(1), (b)(3), (g); 47 CFR § 54.308(a); 47 CFR § 54.313(a)(10).

¹⁴⁷ 47 CFR § 54.313(a)(10). WCB announced the 2024 reasonable comparability benchmark for voice service is \$55.13. See *2024 Urban Rate Survey* at 2-3.

lower rates in rural areas as it does in urban areas.¹⁴⁸ Due to the unique challenges in Alaska, we will allow Fixed ACF recipients to comply with the Alaska-specific reasonable comparability broadband benchmarks established annually by the WCB and OEA.¹⁴⁹

50. In the *Alaska Connect Fund Notice*, we asked whether the Commission should consider changes to the Alaska-specific benchmarks.¹⁵⁰ ARCC suggested that Alaska-specific benchmarks were important but advocated for waiving certain benchmarks for various carriers to avoid oversubscription and empty promises by service providers.¹⁵¹ ATA supports the continued use of Alaska-specific approach, but did not propose detailed adjustments to the calculation.¹⁵² We decline to revise the Alaska-specific benchmark calculation as we find there is insufficient information at this time to justify a revision, and a full assessment of any necessary changes will be better made following BEAD allocation. Accordingly, we delegate authority to WCB to determine whether the methodology for determining the Alaska-specific benchmark needs to be revisited prior the award of Fixed ACF support.

51. *Participation Process.* We delegate authority to WCB to determine a process whereby WCB makes an offer of Fixed ACF support, which eligible carriers must affirmatively accept prior to receiving support. We direct WCB to adopt rules, after an opportunity for public notice and comment, and provide further guidance no later than twelve months before the start of Fixed ACF, that outlines how providers may participate in the program, how support will be allocated, the public interest obligations, and any other requirements for participation in Fixed ACF. We delegate authority to WCB to collect any certifications or information it determines are necessary to help ensure eligible carriers will be able to meet obligations prior to being authorized for support, including certification of ETC designation and certifications of the category for each location included in a participant's service area.¹⁵³

52. *Accountability and Oversight.* The Commission relies on mandatory deployment, reporting and testing requirements, and oversight rules to reduce waste, fraud, and abuse of program support and ensure that carriers are meeting their commitments to provide high-quality broadband services. We adopt our proposal to require the same reporting, performance testing, document retention, and oversight requirements for the Alaska Connect Fund recipients, including penalties for failure to meet the obligations, as for Alaska Plan carriers.¹⁵⁴ Commenters generally agreed that continued oversight and accountability for providers in Alaska is necessary in various forms.¹⁵⁵ We delegate authority to WCB to determine whether additional accountability and oversight measures are required for Fixed ACF once the process for accepting support and support allocation have been determined.

¹⁴⁸ 47 CFR § 54.313(a)(3). The 2024 Alaska-specific reasonably comparable benchmark for broadband at 100/20 Mbps with 660 GB capacity allowance is \$125.89 and for unlimited capacity is \$145.75. See *2024 Urban Rate Survey* at 3.

¹⁴⁹ The Commission directed the Bureau to develop an Alaska-specific reasonable comparability benchmark. See *Alaska Plan Order*, 31 FCC Rcd at 10149, para. 28; *ACS Order*, 31 FCC Rcd at 12092, para. 21; see also FCC, *Alaska 2024 Benchmark Rate Calculator*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (last visited Aug. 16, 2024).

¹⁵⁰ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10006-07, paras. 50-51.

¹⁵¹ ARCC Comments at 17-18, Attachment 1.

¹⁵² ATA Comments at 5; ATA Reply at 4, 14.

¹⁵³ See *supra* Section III.C.2., para. 43 (discussing ABO categories).

¹⁵⁴ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10008, paras. 56-57. See 47 CFR §§ 54.9, 54.10, 54.11, 54.313, 54.314, 54.316, 54.320.

¹⁵⁵ ARCC Comments at 12, 21; AKPIRG Comments at 4; AMMA Comments at 4; TAC Comments at 3; David Bryan Comments (encouraging easier access for consumers to accountability information); ARIC Comments at 2 (encouraging greater public access to accountability information).

53. *Annual reporting.* As required in section 54.313 of the Commission's rules applicable to all high-cost support recipients, Fixed ACF recipients shall file an FCC Form 481 on July 1 each year.¹⁵⁶ Fixed ACF recipients will also be subject to section 54.314 of the Commission's rules, which requires that support be used only for the provision, maintenance, and upgrading of facilities and services.¹⁵⁷ Further, Fixed ACF recipients, like all USF recipients, will be subject to requirements and certifications in section 54.9, 54.10, and 54.11.¹⁵⁸

54. *Performance Testing.* WCB may adopt, after opportunity for public notice and comment, network performance testing methodologies and non-compliance measures that account for unique aspects providing broadband service in Alaska and the Fixed ACF for fixed services, if necessary. However, unless and until WCB adopts such methodologies, recipients of Fixed ACF support for fixed services shall comply with methodologies and non-compliance measures in effect or adopted as of the date the Alaska Connect Fund was adopted.¹⁵⁹

55. *Broadband Deployment Reporting.* As explained above, we delegate authority to WCB to determine, after an opportunity for public comment, whether it is in the public interest to support broadband deployment through Fixed ACF following BEAD and federal broadband funding awards. To the extent that WCB authorizes a carrier for broadband deployment with Fixed ACF support, that carrier shall be subject to section 54.316 of the Commission's rules, which requires high-cost support recipients with defined deployment obligations to annually report locations where it offers broadband service in satisfaction of public interest obligations. We delegate authority to WCB to require similar reporting from Fixed ACF carriers that are receiving support only to maintain existing networks but in the act of maintaining such service also increase service (e.g., by installing replacement equipment that enables the carrier to offer higher speeds). We delegate to WCB authority to adopt any reporting requirements to account for this situation, recognizing that WCB may be able to use the National Broadband Map to monitor as needed since the carrier will not have a defined deployment obligation.

56. *Middle-mile Reporting.* Consistent with existing FCC rules and the Alaska Plan, we adopt the obligation to provide and update maps and notify Commission of middle-mile availability and any service that becomes commercially available.¹⁶⁰ We find that it is in the public interest to continue monitoring middle-mile availability and costs in Alaska to determine how USF support is most efficiently used. While a carrier may upgrade its network based on the newly available middle-mile, we do not necessarily require carriers to upgrade networks during the Fixed ACF support term because Fixed ACF prioritizes network sustaining support. We also adopt a reporting requirement for newly deployed backhaul. We require Fixed ACF participants to submit fiber network maps or microwave network maps in the format specified by the Bureaus covering eligible areas and to update such maps if a recipient has deployed middle-mile facilities in the prior calendar year that are or will be used to support its service in eligible areas. While we adopt this reporting requirement, we nonetheless delegate to WCB the authority to revise the reporting requirements to meet monitoring and compliance needs for Fixed ACF support while also easing administrative burdens, and WCB may assess how the new requirements adopted for mobile can be leverage for fixed networks.

57. *Compliance and Recordkeeping.* Recipients of Fixed ACF support shall be subject to the compliance measures, recordkeeping requirements and audit requirements set forth in section 54.320(a)-

¹⁵⁶ 47 CFR § 54.313.

¹⁵⁷ 47 CFR § 54.314.

¹⁵⁸ 47 CFR §§ 54.9 (prohibiting USF support to companies posing a national security threat), 54.10 (prohibiting capital expenditures provided by the Commission from obtaining or maintaining prohibited services or equipment); 54.11 (requiring a certification that supported networks do not utilize prohibited equipment).

¹⁵⁹ 47 CFR § 54.313(a)(6), *Performance Measures Order* and *Performance Measures Reconsideration Order*.

¹⁶⁰ See 47 CFR §§ 54.316(a)(6), 54.313(f)(3).

(c). In addition, recipients of Fixed ACF shall be subject to the non-compliance measures set forth in section 54.320(d). We direct WCB to issue guidance on how section 54.320(d) will apply to maintenance of specific deployment, absent requirements to do additional deployment. In addition, as noted above, Fixed ACF support recipients will be subject to network performance testing. We direct USAC, under the oversight of WCB and the Office of the Managing Director, to review and revise its audit procedures to take into account the changes adopted in this order.

58. *Affordability Requirement.* While affordability is certainly at the forefront of the Commission's interests,¹⁶¹ particularly in Alaska, we decline to require the offering of a low-cost plan as a condition of receiving Alaska Connect Fund support. We find that we seek improved affordability through the design of the Alaska Connect Fund program generally and that a separate requirement to provide a low-cost plan separate from Lifeline service is not necessary at this time. We understand the argument from some commenters that a consumer subsidy can help affordability of service;¹⁶² however, we find that the high-cost program is not the appropriate USF program to address that issue directly.¹⁶³ Additionally, some of the infrastructure programs that Fixed ACF recipients will also be participating in already implement this requirement.¹⁶⁴ Further, the Affordable Connectivity Program (ACP) concluded on June 1, 2024 due to a lack of additional funding from Congress,¹⁶⁵ making it impossible at this time for us to require that recipients participate in ACP or a substantially similar successor program. Nonetheless, we delegate authority to WCB to adopt rules, after an opportunity for public comment, on ACF provider participation in ACP, if that program is re-authorized, or a substantially similar successor program is enacted or adopted.

3. Alaska Connect Fund Phased Down Support for Fixed Services

59. We also find that it is in the public interest to provide carriers currently receiving USF high-cost support for service in Alaska under the Alaska Plan, *ACS Order*, or A-CAM with phased down support over a three-year period if the amount of annual support a participant will receive in Fixed ACF is less than the amount of annual support the participant received in ACF Transition. The Commission has provided phase-down support to carriers in several high-cost support programs when the amount a carrier is expected to receive going forward is less than the amount of support a carrier receives under the current program.¹⁶⁶ While the Commission has structured phase-down slightly differently for various high-cost

¹⁶¹ See 2024 Section 706 Report at 52-63, paras. 89-104; see also *id.* at Fig. 17 (showing the mean monthly fixed broadband price per household in Alaska at \$131.38 for 25/3 Mbps and \$184.99 for 100/20 Mbps).

¹⁶² TAC Comments at 2; AKPIRG Comments at 2; ARIC Comments at 6; ATA Comments at 22. We note that all ETCs are required to participate in the Lifeline program. See 47 CFR § 54.405(a).

¹⁶³ The Lifeline program provides monthly benefit for eligible subscribers (up to \$34.25 for those living on Tribal lands) to help improve affordability of home or mobile phone service or high-speed broadband.

¹⁶⁴ NTIA's BEAD program prioritizes affordability and proposals that improve affordability to all Americans. The program requires consideration of affordability as one of its three primary criteria and requires offering of an affordable or low-cost plan. See *BEAD NOFO* at 7, 26-27, 30, 40, 43, 45, 66. See October ABO Draft NOFO at 20 (discussing the low-cost option criteria); see also ABO Initial Proposal Volume 2 at 43-46 (discussing low-cost service option, ACP participation and middle-class affordability plan).

¹⁶⁵ The Affordable Connectivity Program concluded in 2024 and no additional support is currently available for this program. See *Wireline Competition Bureau Announces the Final Month of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 24-195 (WCB Mar. 4, 2024) and FCC, *Affordable Connectivity Program Consumer FAQ*, <https://www.fcc.gov/affordable-connectivity-program-consumer-faq> (last visited Aug. 8, 2024).

¹⁶⁶ *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 at 5-6 (Aug. 30, 2023) (providing transitional support for legacy carriers from higher to lower support amounts over several years); see *PR/USVI Stage 2 Order*, 34 FCC Rcd at 9155-58, paras. 87-91 (phasing down support for carriers receiving frozen support); *Wireline Competition Bureau Announces Beginning of Phase Down of Legacy Support* (continued....)

programs, each phase-down is adapted to the specifics of the program and the expected difficulties for the providers, as well as consumers, in shifting high-cost support from one carrier to another.

60. In the *Alaska Connect Fund Notice*, we sought comment on whether phase-down support was appropriate for a period of time as the Commission transitioned carriers from current Alaska support mechanisms to the Alaska Connect Fund.¹⁶⁷ We did not receive comments specifically regarding such a phase down. Nevertheless, we find that a phase-down period of support for carriers that will receive less Fixed ACF support than the support they are receiving during ACF Transition or no Fixed ACF support will ensure a reasonable transition to Fixed ACF amounts and allow carriers to plan network expenditures accordingly to ensure continuity of service for consumers. Beginning in January 2029, a carrier that receives support during ACF Transition and is not eligible for Fixed ACF support or will receive less Fixed ACF support than ACF Transition support, will receive the following high-cost support in addition to its Fixed ACF support, as applicable:

- The first 12 months (2029), the carrier will receive 60% of the difference between ACF Transition and Fixed ACF support;
- The second 12 months (2030), the carrier will receive 30% of the difference between ACF Transition and Fixed ACF support;
- The third 12 months (2031), the carrier will receive 15% of the difference between ACF Transition and Fixed ACF support;
- Thereafter, the carrier will receive whatever, if any, Fixed ACF support for which they are authorized for the remainder of the support term.

Table 1. Examples of Transitional Support

Support Year	Example 1: Carrier A receives \$1 million in ACF Transition support and is eligible for \$700,000 in Fixed ACF support	Example 2: Carrier B receives \$1 million in ACF Transition support and is eligible for \$200,000 in Fixed ACF support	Example 3: Carrier C receives \$1 million in ACF Transition support and is ineligible for Fixed ACF support
2029	\$880,000 [\$700,000 + (60% x 300,000)]	\$680,000 [\$200,000 + (60% x \$800,000)]	\$600,000 (60% x \$1,000,000)
2030	\$790,000 [700,000 +(30% x 300,000)]	\$440,000 [\$200,000 + (30% x \$800,000)]	300,000 (30% x \$1,000,000)
2031	\$745,000 [700,000 + (15% x 300,000)]	\$320,000 [\$200,000 + (15% x \$800,000)]	150,000 (15% x \$1,000,000)
2032-2034	\$700,000 annually in Fixed ACF support	\$200,000 annually in Fixed ACF support	\$0 annually in Fixed ACF support

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for Price Cap Carriers and Fixed Competitive Eligible Telecommunications Carriers After Authorization of Connect America Fund Phase II Auction Support, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3173 (2019) (phasing down support for legacy high-cost price cap carriers once CAF Phase II auction support was authorized).

¹⁶⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10010, paras. 61-62.

61. We find that the accountability and oversight requirements we adopt today for Fixed ACF and that already exist within the Commission's rules are sufficient to protect the success and integrity of transitional support. However, to the extent that starting January 1, 2029, or thereafter, a carrier only receives transitional support for fixed services under Fixed ACF, such carrier shall remain subject to all reporting and certification requirements it had during the ACF Transition. We delegate authority to WCB to adopt reporting and certification tailored to phased down support.¹⁶⁸ We also delegate authority to WCB to extend phase-down support for locations that are not authorized to receive Fixed ACF support but where the ACF Transition recipient is the only carrier offering fixed voice service to that location, if WCB determines it is in the public interest.¹⁶⁹

4. Tribal Nations and Tribal Lands in Alaska

62. We next address how to incorporate Tribal consent into the Fixed ACF program. In the *Alaska Connect Fund Notice*, we sought comment on conditioning the receipt of Alaska Connect Fund support for fixed services on obtaining Tribal consent and adopting a Tribal consent framework similar to the BEAD program.¹⁷⁰ Fixed ACF is designed to prioritize support for the operation and maintenance of already-constructed networks and not for deployment of new fixed services networks. Tribal consent has traditionally focused on obtaining permission to build out or provide new services on Tribal Lands and to Native Communities. With Fixed ACF supporting already deployed networks or networks funded and deployed under other federal programs, many of which require Tribal consent,¹⁷¹ any Fixed ACF support awarded to providers deploying under those programs will support networks that, in many cases, were required to obtain Tribal consent before deploying. Additionally, we remind recipients of high-cost support serving Tribal Lands that they are required to have annual discussions with Tribal governments that include feasibility and sustainability planning and compliance with applicable Tribal requirements.¹⁷² In the companion Further Notice of Proposed Rulemaking, we seek additional public comment on this issue for new deployments under Mobile ACF and any deployments that may be authorized under Fixed ACF.

5. Support After Fixed ACF

63. Before the Fixed ACF term of support ends in December 2034, we anticipate that the Commission will conduct a rulemaking to decide how support in Alaska will continue to be provided once Fixed ACF has concluded. Given the historic levels of investment in broadband deployment, by 2035, the landscape of voice and broadband service in Alaska will differ drastically from what it is today, and the Commission will need to reconsider how best to focus USF support in Alaska, the methodologies for distributing support, and what obligations and standards will be necessary to reflect progress in the marketplace. Our actions today to establish an ACF Transition and Fixed ACF seek to ensure that Alaska will be well positioned with regard to fixed services at the end of 2034.

D. ALASKA CONNECT FUND FOR MOBILE PROVIDERS

64. As with fixed service, there continues to be a need for Universal Service Fund support to ensure that Alaskans have access to the same level of mobile service as consumers in the rest of the

¹⁶⁸ The Administrator shall collect an amount of support to meet the demand, as calculated herein, for this phase-down support.

¹⁶⁹ See APT Aug. 8, 2024 *Ex Parte* at 5-6 (asking about how the Commission will handle standalone voice service by an unsubsidized carrier).

¹⁷⁰ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10009-10, para. 60.

¹⁷¹ See BEAD NOFO at 38, 48; 7 CFR § 1740.60(c)(19).

¹⁷² See 47 CFR § 54.313(a)(5).

country. In this Order, we extend support to Alaska Plan mobile-provider participants after the Alaska Plan concludes on December 31, 2026, as detailed below. In extending support, we make changes to ensure the effective use of USF funding, including ensuring funding is targeted to current generation mobile service, avoiding duplicative support, and ensuring support is targeted to where consumers live, work, and travel in remote Alaska.

65. As explained below, we establish two separate approaches—one tailored towards single-support areas, and another tailored for duplicate-support areas. In eligible single-support areas, we extend support with the ultimate goal of achieving at least 5G-NR service at 35/3 Mbps in an outdoor stationary environment (5G-NR 35/3 Mbps) where technically and financially feasible by December 31, 2034.¹⁷³ This ensures that support is targeted towards the latest generation mobile service, while also providing certainty about the level of support. In duplicate-support areas, we extend support through December 31, 2029, where support recipients are to work to extend at least 4G LTE service at 5/1 Mbps in an outdoor stationary environment (4G LTE 5/1 Mbps) by December 31, 2029 (ACF Mobile Phase I),¹⁷⁴ and we separately seek comment in the Further Notice below on how best to award support for the period January 1, 2030, through December 31, 2034, for these areas (ACF Mobile Phase II).

66. We also update our eligible areas determination to remove those areas that: (i) have an unsubsidized provider¹⁷⁵ offering at least 5G-NR 7/1 Mbps in an outdoor stationary environment; (ii) have three or more mobile providers offering at least 4G LTE 5/1 Mbps in an outdoor stationary environment with at least one of the providers being unsubsidized; or (iii) are inaccessible or unsafe for testing. These measures further ensure that support is targeted to areas where it is needed the most while maintaining accountability for how funds are used.

67. All coverage analysis including all performance plans required by the Alaska Connect Fund—i.e., for single-support areas and for duplicate-support areas under ACF Mobile Phase I—will rely on BDC data.¹⁷⁶ Consistent with the BDC, all ACF participants must show that consumers can receive

¹⁷³ See GCI Oct. 23, 2024 *Ex Parte* at 1 (“Set speed and technology targets as aspirational guides for the development of performance plans, rather than presumptive performance requirements”); Letter from Jeffry H. Smith, VP Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (Oct. 13, 2024) (ARCC Oct. 13, 2024 *Ex Parte*). For the Alaska Connect Fund, 5G networks must meet at least the 5G-NR (New Radio) technology standards developed by the 3d Generation Partnership Project with Release 15 (or any successor release that may be adopted by WTB after appropriate notice and comment). See *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12183, para. 20 (2020) (*5G Fund Report and Order*); see also Letter from Jeff Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (Aug. 20, 2024) (seeking definitional clarity of “5G” for the Alaska Connect Fund). The *5G Fund Second Report and Order* directed WCB and OEA to initiate a notice-and-comment rulemaking to determine whether and how to update the 3GPP standard. See *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 24-89, at 54, para. 105 (rel. Aug. 29, 2024) (*5G Fund Second Report and Order*), <https://docs.fcc.gov/public/attachments/FCC-24-89A1.pdf>. For providers that seek a lesser commitment than the technology and speed goals, we require that the provider explicitly state the reason it cannot commit to the minimum deployment goals as a notation under the proposed performance plan for each census tract. See *infra* Section III.D.3. (Additional Public Interest Obligations). There will be a strong presumption against approving lesser commitments below 4G LTE of at least 5/1 Mbps in an outdoor stationary environment for any milestone.

¹⁷⁴ We allow for lesser performance plan commitments in duplicate-support areas because of the potential for support changes in duplicate-support areas after December 31, 2029, and because in duplicate-support areas there is already competitive pressure to offer service beyond the minimum we require in the Alaska Connect Fund. See *infra* Section III.D.2.e. (Deployment Goals and Commitments).

¹⁷⁵ For purposes of the Alaska Connect Fund, an “unsubsidized provider” is one that does not receive Alaska Plan support.

¹⁷⁶ Using BDC data allows the Commission to disburse funds under the Alaska Connect Fund using the availability data on the National Broadband Map. Additionally, to ensure proper plan administration, we will also (1) require
(continued....)

the minimum technology level and speed with a cell edge coverage probability of not less than 90% and a cell loading of not less than 50%.¹⁷⁷ All mobile providers will be required to file BDC mobile verification infrastructure data annually, and mobile providers receiving more than \$5 million in support on an annual basis will be required to conduct speed tests and submit speed test results to WTB when the mobile providers submit their milestone certifications as detailed below.¹⁷⁸

1. Completion of Alaska Plan Period: January 2025 to December 2026

68. As an initial matter, the requirements under the mobile portion of the Alaska Plan will remain in place through the end of that plan, and the mobile portion of the Alaska Connect Fund will begin on January 1, 2027.¹⁷⁹ Mobile-provider participants of the Alaska Plan remain obligated to comply with Alaska Plan requirements through the end of the Alaska Plan, including, *inter alia*, meeting their 10-year commitments by December 31, 2026 and complying with any Alaska Plan-specific filing requirements before and after that end date. In short, nothing in this Order shall be read as affecting the obligations owed by mobile-support recipients under the Alaska Plan.

69. As we explain in the Budget section above, starting January 1, 2025, mobile-provider participants of the Alaska Plan will have their support amounts increased by 30%. While we increase the mobile support under the Alaska Plan and continue support under that plan through the end of December 2026, in all other aspects this increase is not a new award of funding with respect to deployment.¹⁸⁰ The increase is solely for current Alaska Plan providers under their current Alaska Plan obligations for coverage and deployment. We recognize that obligations will increase under the Alaska Connect Fund, and providing more support is appropriate in order for Alaska Plan providers to begin making improvements towards those obligations, as well as enabling them to better meet their Alaska Plan build-out obligations by December 31, 2026.

70. The Alaska Plan is a ten-year plan with the providers' final commitments due December 31, 2026.¹⁸¹ ATA—which represents all eight mobile-provider participants of the Alaska Plan—petitions the Commission to start a new 10-year plan, starting in 2024 and ending December 31, 2034.¹⁸² ATA argues that guaranteed support for another 10 years would provide the certainty necessary for providers to

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annual submissions of mobile infrastructure data filed consistent with the BDC mobile verification data specifications; and (2) delegate authority to WTB to require special submissions, as it deems necessary, throughout the course of the Alaska Connect Fund.

¹⁷⁷ 47 CFR § 1.7004(c)(3).

¹⁷⁸ FCC, *Broadband Data Collection Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes* §§ 1.1-1.9 (Feb. 20, 2024), <https://us-fcc.app.box.com/v/bdc-infrastructure-spec>. Providers will be required to submit speed test results to WTB consistent with the BDC speed test data specifications. See FCC, *Broadband Data Collection Data Specifications for Mobile Speed Test Data* (Nov. 18, 2022), <https://us-fcc.app.box.com/v/bdc-mobile-speedtest-spec>; see also *infra* Section III.D.4. (setting forth in detail the speed test requirements for mobile providers receiving more than \$5 million annually in mobile support).

¹⁷⁹ See GCI Oct. 23, 2024 *Ex Parte* at 1.

¹⁸⁰ The Broadband DATA Act requires that the Commission use the National Broadband Map for any “new award of funding with respect to the deployment of broadband internet access service intended for use by residential and mobile customers.” 47 U.S.C. § 642(c)(2)(B); Broadband DATA Act, Pub. L. No. 116-130, § 802, 134 Stat. 228, 236 (2020), <https://www.congress.gov/116/plaws/publ130/PLAW-116publ130.pdf>. The Alaska Plan has dedicated support until December 31, 2026, but after that date, no funding has been allocated for any new deployment obligations.

¹⁸¹ See 47 CFR § 54.317(d); *Alaska Plan Order*, 31 FCC Rcd at 10159, para. 66; *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx.

¹⁸² ATA Petition at 2.

invest in their networks.¹⁸³ ATA has expressed concern about the ability of providers to adequately plan for new deployments and upgrades while the availability of support after the Alaska Plan ends is still uncertain.¹⁸⁴

71. In the *Alaska Connect Fund Notice*, we sought comment on ATA’s petition to extend support until 2034, in which it requested that the new plan begin in 2024.¹⁸⁵ For mobile, current support recipients will continue receiving support under the Alaska Plan through its original December 31, 2026 end date, and mobile support under the Alaska Connect Fund will begin January 1, 2027 and end on December 31, 2034, subject to the conditions and requirements for the program. The initial support under the Alaska Connect Fund will act as an extension of support (extended support) after the Alaska Plan ends, with new obligations, such as requiring all mobile providers to rely on BDC coverage data. Some commenters join ATA and urge us to commence the Alaska Connect Fund term as soon as possible.¹⁸⁶ While we recognize those arguments that immediate commencement of the Alaska Connect Fund term may provide stability and predictability to commit to long-term investments,¹⁸⁷ or may further enable efficient capital planning and coordination with the BEAD and ReConnect funding opportunities,¹⁸⁸ we find it is important to ensure that mobile-provider participants of the Alaska Plan meet the 10-year commitments they made for December 31, 2026. And unlike fixed service, mobile-support recipients already have a single unified end date under the Alaska Plan. In addition, because the mobile portion of the Alaska Connect Fund is a new support fund, with new obligations, we find it necessary to allow time for mobile providers to transition to the new obligations before the Alaska Connect Fund begins. In any event, because we are adjusting the support amounts for the Alaska Plan participants beginning January 1, 2025, we think ATA’s concerns about beginning the new plan as soon as possible are adequately addressed.

72. We discuss the term lengths for the mobile portion of the Alaska Connect Fund in more detail below.¹⁸⁹ In addition, we note that mobile providers that opt into the Alaska Connect Fund will be required—in addition to their new obligations detailed in this Order—to maintain service at the same minimum service levels that were required under the Alaska Plan, and they may not provide less coverage or provide service using a less advanced technology than the provider committed to under the Alaska Plan, as detailed further below.¹⁹⁰

¹⁸³ ATA Petition at 2, 15-16.

¹⁸⁴ See ATA Comments at 26-27; see also GCI Reply at 9.

¹⁸⁵ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10035, para. 118; ATA Petition at 15; ATA Comments at 26.

¹⁸⁶ ARIC Comments at 9; WTA Comments at 2-3.

¹⁸⁷ GCI Reply at 7; see also WTA Comments at 2-3 (“[C]ommencing the initial Alaska Connect Fund term as soon as possible . . . will accelerate the planning and investments in Alaskan broadband extensions and upgrades . . .”).

¹⁸⁸ ATA, *Alaska Connect Fund* at 7, <https://www.fcc.gov/ecfs/document/10506749117274/3>, attached to Letter from Christine O’Connor, Executive Director, Alaska Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 10-208, and 23-328, WT Docket No. 10-208 (filed May 6, 2024) (ATA May 6, 2024 *Ex Parte*); see also ATA Comments at 26 (arguing that immediate commencement of the Alaska Connect Fund term will “enable providers to adequately plan for new deployments and upgrades and put them on solid footing to assess what new deployments they can compete in conjunction with federally funded middle-mile projects, including BEAD-funded middle-mile projects”).

¹⁸⁹ See *infra* Section III.D.2.a. (Support Term and Timing).

¹⁹⁰ See *infra* Section III.D.2.e. (Deployment Goals and Commitments).

2. Two Support-Area Plan for Alaska Connect Fund Mobile

a. Support Term and Timing

73. The mobile portion of the Alaska Connect Fund will begin after the Alaska Plan ends (i.e., January 1, 2027) and will end on December 31, 2034. As explained below, mobile support will have different support term lengths, or extension periods—as well as different requirements—based on whether an area is a single-support area or a duplicate-support area.¹⁹¹ For purposes of the Alaska Connect Fund, we define single-support areas—which we anticipate will be the substantial majority of the support areas—as areas covered by one Alaska Plan mobile provider participant and define duplicate-support areas as areas covered by two or more Alaska Plan mobile-provider participants.¹⁹²

74. We reject ATA Petition’s proposal that we allow for automatic extensions of a new plan in one-year intervals at the end of the term unless the Commission acts otherwise.¹⁹³ The Alaska Connect Fund will begin January 1, 2027, and the initial support under the Alaska Connect Fund will act as an extension of support (extended support) after the Alaska Plan, with new obligations, such as requiring all mobile providers to rely on BDC coverage data.¹⁹⁴ We decline to adopt automatic extensions in one-year intervals of the Alaska Connect Fund, as ATA requests.¹⁹⁵ The support terms we adopt today for the mobile portion of the Alaska Connect Fund give providers a sufficient amount of certainty, but we set a specific end date for the mobile portion of the Alaska Connect Fund at this time, consistent with other high-cost support funds,¹⁹⁶ so that the Commission can re-evaluate the broadband needs in remote Alaska to determine whether continued high-cost support is needed and make any necessary adjustments at that time. We also reject arguments for annual performance reviews and full reviews of the Alaska Connect Fund every five years.¹⁹⁷ The performance plans, public interest obligations, and accountability and oversight measures adopted in the sections below will adequately ensure that providers are meeting their deployment obligations and are held accountable for any failure to meet their obligations.¹⁹⁸

¹⁹¹ Areas with three or more mobile providers providing at least 4G LTE service at 5/1 Mbps in an outdoor stationary environment—with at least one of those providers being unsubsidized—are ineligible and are, thus, not included as duplicate-support areas.

¹⁹² Areas that are ineligible under the Alaska Connect Fund are not considered to be single- or duplicate-support areas, and mobile participants under the Alaska Connect Fund cannot use their support to provide mobile service in these areas. As described in more detail below, we use the H3 system, which is used in the BDC, at the hex-9 resolution to determine coverage areas for the mobile portion of the Alaska Connect Fund. *See infra* Section III.D.2.c. (Determining Coverage Areas for Alaska Connect Fund). Eligible hex-9s are ineligible for mobile support under the Alaska Connect Fund to the extent that they are covered by one unsubsidized mobile provider offering 5G-NR at 7/1 Mbps or better, covered by three or more mobile providers offering 4G LTE at 5/1 Mbps or better (with at least one of those providers being unsubsidized), or are deemed inaccessible or unsafe for testing. Consequently, such areas would not be considered single- or duplicate-support areas for purposes of the Alaska Connect Fund. We provide further discussion of “eligible areas” for mobile support under the Alaska Connect Fund below. *See infra* Section III.D.2.d. (Eligible Providers and Areas).

¹⁹³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10035, para. 118.

¹⁹⁴ *See infra* Section III.D.1. (Completion of Alaska Plan Period: January 2025 to December 2026).

¹⁹⁵ ATA Petition at 15.

¹⁹⁶ *See, e.g., 5G Fund Report and Order*, 35 FCC Rcd at 12193, para. 40 (adopting a 10-year support term for each phase of the 5G fund); *Alaska Plan Order*, 31 FCC Rcd at 10165, para. 80 (adopting a 10-year support term for the mobile portion of the Alaska Plan).

¹⁹⁷ ARIC Comments at 9-10.

¹⁹⁸ *See infra* Sections III.D.2.f. (Submission of Alaska Connect Fund Performance Plans), III.D.3. (Additional Public Interest Obligations), III.D.4. (Accountability and Oversight).

75. *Extension for Single-Support Areas.* We extend high-cost mobile support in Alaska until December 31, 2034 for eligible areas where only one mobile provider receives support and offers service, if the provider meets the applicable conditions of the extension. Specifically, if one mobile provider participant of the Alaska Plan provides service in an area, we extend support for that provider in that area through December 31, 2034 under the Alaska Connect Fund, subject to the increased support amounts discussed above, and new obligations and limitations set forth in this Report and Order. Universal service support is intended to ensure that areas that the private sector would not serve, without subsidies, can enjoy the benefits of the communications network similar to urban areas.¹⁹⁹ Areas with one supported high-cost mobile provider align with how high-cost support was designed to operate by supporting one provider in an area which can bring the benefits of advanced communications to areas that lack a private sector business case. Accordingly, in areas where only one provider offers mobile service to Alaskans, it is imperative that the service continue to operate reliably and consistently; otherwise, Alaskans could be left without service. In addition, to ensure that consumers in these high-cost areas receive the same access to advanced communications services that should be provided in all regions of the Nation,²⁰⁰ we expect the provider to upgrade the service offered to 5G-NR in its single-support areas, where technically and financially feasible. We find this to be a reasonable goal because support will be extended to the provider in those areas until December 31, 2034. Consistent with ATA's request, this guaranteed support will enable providers to invest in upgrades to their networks and facilities in order to ensure that consumers in these areas are served with fast, reliable, and advanced mobile services, while facilitating long-term planning.²⁰¹

76. *Extension for Duplicate-Support Areas.* Where two or more mobile-provider participants under the Alaska Plan cover the same eligible area, we agree in part with ATA that the Commission should maintain certainty and predictability for providers.²⁰² We also find it necessary, however, to balance ATA's concerns with the need to address the problem of offering providers duplicate support long-term—which runs counter to our universal service fund policies.²⁰³ We therefore guarantee extended support in duplicate-support areas, but for a shorter period of time than in single-support areas. Specifically, we extend support in duplicate-support areas for existing support recipients through December 31, 2029, subject to the limitations and additional obligations discussed in this Order.²⁰⁴

77. In the *Alaska Connect Fund Notice*, we asked how the Commission should address duplicate support.²⁰⁵ While the record developed in this proceeding did not provide any information directly addressing the issue of the appropriate support term for duplicate-support areas if we were to extend support for those areas, we received comments regarding the general issue of duplicate-support areas, and we use these comments as the rationale for our decisions.²⁰⁶ In addition, GCI notes that an

¹⁹⁹ See, e.g., 47 U.S.C. § 254(b); *Alaska Plan Order*, 31 FCC Rcd at 10145-46, para. 16; *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, 17681-82, 17824, paras. 5 (“Today’s Order focuses on costly-to-serve communities where even with our actions to lower barriers to investment nationwide, private sector economics still do not add up, and therefore the immediate prospect for stand-alone private sector action is limited.”), 51-54, 494 (“We set a budget . . . to promote mobile broadband in these areas, where a private sector business case cannot be met without federal support.”).

²⁰⁰ 47 U.S.C. § 254(b)(2).

²⁰¹ See ATA Comments at 22-23; GCI Reply at 7.

²⁰² See ATA Comments at 26-27.

²⁰³ See, e.g., *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90 (“It is generally not the policy of the Universal Service Fund to subsidize competition.”).

²⁰⁴ We also note that ACF Mobile Phase I could be extended beyond 2029 by WTB. See *infra* Section III.D.2.a. (Support Term and Timing).

²⁰⁵ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025, para. 93.

extension of support would allow time to further evaluate the extent of the existence of duplicate-support areas.²⁰⁷

78. We take action to remove duplicative high-cost mobile support after a short-term extension of support for providers in those areas. It is important to ensure that universal service funds are used in the most efficient manner and not used to prop up competition where it already exists.²⁰⁸ Nevertheless, we cannot conclude that subsidies are unnecessary to maintain service in these areas solely because two or more subsidized providers currently serve those areas, and we recognize commenters in the record who urge us to proceed cautiously before mitigating potential areas of overlap.²⁰⁹ We therefore are not removing these areas entirely from eligibility in the Alaska Connect Fund because—without high-cost support—it is possible that no provider would have an incentive to offer mobile service in these areas, and we would risk the number of service providers going from two (or more) to zero in an area if we were to withdraw support entirely. We do not guarantee support to both (or more) providers in these areas indefinitely, however, given the concerns of providing duplicate support to multiple providers, and instead seek comment in the Further Notice, *infra*, on a framework for allocating and distributing funds in these areas after December 31, 2029.

79. We find that this approach best balances several competing concerns. This framework allows for a period of certainty so that the mobile service provider participants of the Alaska Plan can continue network planning and making contractual arrangements in the short term if they choose to opt into the Alaska Connect Fund,²¹⁰ thereby continuing to build on the progress of the Alaska Plan. And while we do not need time to evaluate the extent of duplication,²¹¹ the additional time will allow the development of a more fulsome record regarding how best to address it. While removing support from high-revenue areas may affect how providers offer coverage in surrounding areas, we note that providers may retain mobile facilities in those areas; in areas deemed ineligible, however, they just cannot use Alaska Connect Fund support for those mobile facilities. The extended support and notice of the options in the Further Notice, however, allow the providers in duplicate-support areas time for network planning necessary to position themselves to compete to win the support in those areas or be ready to reallocate the support they were using to other eligible areas.

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²⁰⁶ See, e.g., AMMA Comments at 8 (supporting removing duplicate support); ATA Comments at 25, 32-33 (expressing concerns with addressing duplicate support, as removal of support from one area could affect the revenue basis surrounding coverage in the surrounding areas); GCI Reply at 5-7 (expressing concerns with addressing duplicate support); see also Letter from Jeffrey M. Bayne, Attorney for Ketchikan Public Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 3 (filed Aug. 26, 2024) (KPU Aug. 26, 2024 *Ex Parte*) (“[T]he Commission should not adopt proposals related to funding reduction or elimination based on competitive overlap.”).

²⁰⁷ Letter from John T. Nakahata, Julie A. Veach, Annick M. Banoun, Counsel to GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 3 (filed Aug. 8, 2024) (GCI Aug. 8, 2024 *Ex Parte*).

²⁰⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, 17824, paras. 5 (“Today’s Order focuses on costly-to-serve communities where even with our actions to lower barriers to investment nationwide, private sector economics still do not add up, and therefore the immediate prospect for stand-alone private sector action is limited.”), 494 (“We set a budget . . . to promote mobile broadband in these areas, where a private sector business case cannot be met without federal support.”); see also 47 CFR § 54.319 (eliminating support to areas with an unsubsidized competitor); *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90 (“It is generally not the policy of the Universal Service Fund to subsidize competition.”); *Alaska Plan Order*, 31 FCC Rcd at 10169, para. 92; see also 47 U.S.C. § 254(k) (prohibiting telecommunications carriers from using services that are not competitive to subsidize services that are subject to competition).

²⁰⁹ See ATA Comments at 32-33; GCI Reply at 5-6.

²¹⁰ See ATA Comments at 26-27.

²¹¹ See GCI Aug. 8, 2024 *Ex Parte* at 3.

80. We delegate authority to WTB to resolve any ambiguities as to the classification of support areas or the determination of which provider receives support in an area if they arise during the course of the Alaska Connect Fund.²¹² Support amounts per area are addressed in the Further Notice. We delegate authority to WTB to resolve support amounts per area after the comment cycle of the Further Notice concludes. In case another mechanism cannot be implemented before the start of 2030 for duplicate-support areas, we delegate to WTB the authority to extend ACF Mobile Phase I after notice and comment, until ACF Mobile Phase II is adopted, or until December 31, 2034, whichever is earlier. We also delegate to WTB the ability to impose additional requirements, after notice and comment, in duplicate-support areas for mobile providers to receive extended support under ACF Mobile Phase I beyond December 31, 2029. Support would continue unaltered under such circumstances until ACF Mobile Phase II in duplicate-support areas begins.

b. Purpose of Two-Support Area Plan for Alaska Connect Fund

81. We find that our approach of adopting two plans specifically tailored for single- and duplicate-support areas best addresses the concerns of ensuring Alaskans in remote areas have continued broadband service and that mobile-provider participants have a level of certainty in support for their network planning and deployment, while also taking steps to address duplicate support.

82. In the *Alaska Connect Fund Notice*, we sought comment generally on what the Alaska Connect Fund for mobile support should look like, as well as what actions the Commission should take to ensure that Alaskans in remote areas, particularly unserved and underserved areas, can access and continue to receive reliable and secure mobile service at reasonable prices.²¹³ We also sought comment on how to address duplicate support going forward in Alaska.²¹⁴ We observed that it is generally not the policy of the Universal Service Fund to subsidize competition, but under the Alaska Plan, some areas had as many as three mobile-provider participants providing mobile service in the same eligible area.²¹⁵ The *Alaska Connect Fund Notice* asked how the Commission should address situations where two or more prospective participants of the Alaska Connect Fund cover the same geographic area, and whether we should continue to provide universal service support to two or more providers in the same area.²¹⁶ We further asked whether we should allow only one subsidized provider to continue receiving support in a duplicate-support area, or alternatively whether duplicate-support areas should be deemed ineligible for support. Finally, we sought comment on the appropriate method to determine which provider should receive support for duplicate-support areas, and the appropriate manner to redistribute funds that were going to such areas.²¹⁷

83. Commenters varied in their arguments on how best to address duplicate support. ATA, which has members that receive duplicate support, argued that the Commission should continue to provide support to these areas to ensure continuity of service and indicated that if support in duplicate-support areas is eliminated, it would prevent such providers from serving surrounding areas.²¹⁸ Additionally, ATA claims that providers in overlapping areas rely on the other provider's network in

²¹² See *infra* Section III.D.2.d.iii. (Eligible-Areas Map).

²¹³ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10011, 10017, paras. 63, 75.

²¹⁴ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025, para. 93.

²¹⁵ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90.

²¹⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024-25, paras. 90-91.

²¹⁷ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025, paras. 92-94.

²¹⁸ ATA Comments at 25; see also Letter from Jeffrey H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23, Attach. A at 3 (filed June 27, 2024) (ARCC June 27, 2024 *Ex Parte*) (advocating for continued duplicate or “overlap” support and proposing an alternative with percentages of “overlap” support); KPU Aug. 26, 2024 *Ex Parte* at 2.

certain instances (leases and roaming) and without continued universal service support, there is a risk a provider will no longer be able to service that area.²¹⁹ Joining in ATA's position, GCI cautions against automatically excluding areas from Alaska Connect Fund support due to the presence of multiple providers, noting that it is critical the Commission avoid a situation where it decreases services available to Alaskans.²²⁰ Ketchikan Public Utilities notes that due to its high cost in Alaska, middle-mile infrastructure is often utilized by both the facility owner and one or more competitors, and that such infrastructure may not be built absent support comparable to the Alaska Plan.²²¹ AMMA, on the other hand, recommends that the Commission redistribute the duplicate support to middle-mile support to help providers fulfill their build-out commitments.²²²

84. While commenters urge us to preserve support for existing mobile services even where they overlap, we find that eliminating duplicate support continues to be the most effective policy for achieving our universal service goals. The Commission adopted this policy after evaluating over a decade of experience supporting multiple networks in the same area and determining that it should no longer subsidize competition,²²³ and the Commission has sought to eliminate duplicate, high-cost mobile support in Alaska.²²⁴ We find that the record does not support departing from this policy goal by providing long-term duplicate support in the Alaska Connect Fund. We also reject AMMA's proposal to redistribute duplicate support to middle mile as inappropriate.²²⁵ We find that redistributed support from duplicate-support areas may be better spent expanding and upgrading last-mile networks in unserved and underserved areas for the purposes of the Alaska Connect Fund, as other prominent federal broadband programs may not include support for last-mile mobile services in Alaska.²²⁶ While we will not provide duplicate support in the long-term, we agree that we should not jeopardize potential services to Alaskans in the near term.²²⁷

85. Accordingly, in areas eligible for support, we will distinguish between single-support areas and duplicate-support areas in establishing support terms and requirements under the mobile portion of the Alaska Connect Fund. As explained above, in single-support areas, we extend support for current

²¹⁹ ATA Comments at 32-33.

²²⁰ GCI Reply at 5-6.

²²¹ KPU Aug. 26, 2024 *Ex Parte* at 2.

²²² AMMA Comments at 8.

²²³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17780, para. 319; see also *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 24-89, at 46, para. 84 (rel. Aug. 29, 2024) ("Continued delay of the transition away from legacy support is antithetical to our efforts in this proceeding to avoid providing support to the same area where another mobile service provider is receiving or will receive support to deploy 5G service.") (*5G Fund Second Report and Order and Second Further Notice*).

²²⁴ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90 ("It is generally not the policy of the Universal Service Fund to subsidize competition."); *Alaska Plan Order*, 31 FCC Rcd at 10169-70, 10174-75, paras. 92-94, 107-112 (seeking to address 4G LTE duplicate support that may occur over the course of the Alaska Plan).

²²⁵ AMMA Comments at 8.

²²⁶ ATA Comments at 32-33 (noting that the Commission "should not hasten to jeopardize potential services available to Alaskans by pursuing policies to mitigate potential areas of overlap"); ATA May 6, 2024 *Ex Parte*, Attach. at 8-11 (noting that Alaska Connect Fund is needed in addition to other federal programs); Letter from Christine O'Conner, Executive Director, Alaska Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208, Attach. at 1 (filed Mar. 15, 2024) (ATA Mar. 15, 2024 *Ex Parte*) ("Providers are eager to upgrade to LTE and to 5G, where feasible. . . . BEAD and ReConnect do not fund mobile services; . . .").

²²⁷ See ATA Comments at 32-33.

participants until December 31, 2034. However, in duplicate-support areas, we guarantee support for current participants until December 31, 2029, and we seek comment in the Further Notice on how best to award support to a single provider in those areas after that time through the end of December 2034. In the *Alaska Plan Order*, we deemed some remote areas as ineligible if there was evidence that the private sector would serve the area without support.²²⁸ We update our definition of ineligible areas here, and where, as of December 31, 2024, there is an unsubsidized provider covering that area with 5G-NR service at least 7/1 Mbps in an outdoor stationary environment or three or more mobile providers—with at least one of those providers being unsubsidized—covering the area with 4G LTE service of at least 5/1 Mbps in an outdoor stationary environment, those areas are ineligible for support as those areas have demonstrated that they would receive service absent high-cost support.²²⁹ WTB, in coordination with OEA, will publish a map showing all ineligible and supported areas in Alaska, as detailed below.

c. Determining Coverage Areas for Alaska Connect Fund

86. Because the Alaska Connect Fund will rely on data from the BDC,²³⁰ we will use the H3 standardized, open-source geospatial indexing system developed by Uber Technologies, Inc.—which is used in the BDC²³¹—for the mobile portion of the Alaska Connect Fund. In the context of the National Broadband Map, the BDC mobile broadband coverage areas submitted by providers are overlaid with H3 resolution 9 hexagon area (hex-9s) and, in the National Broadband Map, if the centroid of the hex-9 overlaps the raw coverage area, then the hex-9 is considered covered for purposes of displaying coverage. Mobile broadband coverage data is also made available for download from the National Broadband Map based on hex-9s. Given the hex-9s' relatively small size of approximately 0.1 square kilometers on average,²³² they can be aggregated to closely correspond to any Census geography (e.g., census tract or block groups).

87. In the *Alaska Connect Fund Notice*, the Commission sought comment on its proposal of using the H3 system and asked a number of questions about whether the hex-9 resolution was the appropriate level for identifying geographic areas eligible for support.²³³ While ATA argued that the Commission should continue to use census blocks,²³⁴ OptimERA commented that hex-9s give good resolution and the ability for the Commission to monitor providers to ensure they are meeting build-out obligations.²³⁵ In order to align our analysis with the BDC, we reject ATA's suggestion to continue to use census blocks as the basis of analysis, and rely on the H3 system. As in the *Alaska Connect Fund Notice*, we find that "[t]he H3 system is useful because it provides a canonical way to reference, index, and

²²⁸ See *Alaska Plan Order*, 31 FCC Rcd at 10168-69, paras. 90-91.

²²⁹ As detailed below, we also remove from eligibility areas that are unable or unsafe to be tested. See *infra* Section III.D.2.d.ii. (Eligible Areas for Support).

²³⁰ We discuss our use of the BDC for the mobile portion of Alaska Connect Fund below. See *infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

²³¹ *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007, 3086, Appx. A § 2.1 (WTB/OEA/OET 2022) (*BDC Mobile Technical Requirements Order*).

²³² See H3, *Table of Cell Statistics Across Resolutions, Cell Areas*, <https://h3geo.org/docs/core-library/restable/> (last visited Aug. 30, 2024) (Average Hexagon Area, Res 9).

²³³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10017-20, paras. 79-81.

²³⁴ ATA Comments at 23-26 (advocating for the use of existing Alaska Plan census blocks, but noting that ATA "continues to evaluate the Commission's proposal to use the H3 hexagonal geospatial indexing system and related questions regarding hexagonal resolution levels").

²³⁵ OptimERA Reply at 8 (noting that "[u]sing Hex-9 gives good resolution and ability to ensure that winning operators are meeting target requirements," but arguing against its use as "the basis for support of mobile networks").

compare wireless coverage using boundaries that are of a nearly uniform size.”²³⁶ Because we rely on the H3 system to align with the BDC, we do not use census blocks as the minimum geographic level of analysis. We agree with OptimERA that hex-9s give good resolution and the ability for the Commission to monitor providers to ensure they are meeting build-out obligations, and nothing in the record disputes the benefits of using the H3 system at hex-9 resolution level.²³⁷ The BDC mobile broadband coverage is displayed down to the hex-9 resolution on the National Broadband Map, and such data are made available for download for easy public understanding of approximately where there is coverage or where coverage is deficient in Alaska. For these same reasons, the Commission has used the H3 system at hex-9 resolution for defining the eligible areas for the 5G Fund.²³⁸ We are persuaded that the same system and resolution should also apply for the Alaska Connect Fund. While we do not make the minimum level of analysis the census block, we do rely on census tracts where analysis of hex-9s needs to be aggregated.²³⁹ Aggregating at the census-block level is often too small an area for a meaningful aggregated analysis of hex-9s, but aggregation of hex-9s at the census-tract level offers the benefits of integrating census data with the BDC data and the H3 system while keeping the areas referenced in performance plans a reasonable size.²⁴⁰

88. *Coverage at the Hex-9 Level.* We will use the following methodology to determine whether and how a hex-9 is covered for purposes of the mobile portion of the Alaska Connect Fund—for example, to determine single- and duplicate-support areas, as well as for other purposes such as determining whether a provider has met its commitments. We will determine whether a hex-9 is covered by a specific speed or technology—or by a specific provider or providers—by examining coverage of the hex-11s that comprise the hex-9. Hex-11s are a finer resolution of hexagons available under the H3 geospatial indexing system.²⁴¹ A hex-9 will be deemed to be covered if at least 70% of the hex-11s in the hex-9 are covered at the centroid, by the relevant provider and/or technology. For example, to determine whether the centroid of a hex-11 is covered by 4G LTE, we will overlay hex-11 areas on BDC mobile coverage maps. Any hex-11 whose centroid shows coverage by 4G LTE service is considered covered and is counted in the number of covered hex-11s. For the parent hex-9 to be considered covered, the number of hex-11s deemed to be covered must be at least 70%²⁴² of the total number of hex-11s in the

²³⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10017-18, para. 79.

²³⁷ OptimERA provides no explanation or support for its statement that Hex-9s should not be the basis for mobile support. OptimERA Reply at 8. For the reasons described—namely that using the H3 system allows us to align with BDC data and, as OptimERA itself notes, Hex-9s “give good resolution”—we find hex-9s to be to appropriate resolution for the mobile portion of the Alaska Connect Fund.

²³⁸ *5G Fund Second Report and Order* at 25-26, paras. 44-45.

²³⁹ See *infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

²⁴⁰ Alaska has 167 census tracts, 534 census block groups, and 45,292 census blocks in Alaska. Census, *Guide to State and Local Census Geography*, https://www2.census.gov/geo/pdfs/reference/guidestloc/ak_gslcg.pdf. Performance plans are to be specified by census tract. See *infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

²⁴¹ A hex-11 is approximately 2,150 square meters.

²⁴² We use “at least 70%,” consistent with our approach in other Commission orders concluding that 70% constitutes a substantial majority. In the context of the Lifeline program, for example, the Commission decided to “establish minimum service standards for all Lifeline supported services based on services to which a ‘substantial majority’ of consumers have already subscribed” and “conclude[d] that 70 percent of consumers constitutes a ‘substantial majority’ as it relates to fixed broadband speeds.” *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-197, and 10-90, *Third Report and Order*, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 3989, 3992, 3993, paras. 74, 81 & n.240, 86 (2016). The Commission also concluded in the context of Lifeline program mobile services that “after the phase-in of mobile data usage allowance standards, [it would] update mobile broadband standards for data usage allowance in line with the principle of supporting services that a ‘substantial majority’ of American consumers subscribe to,” and that “given the types of
(continued....)

hex-9.²⁴³ Similarly, to determine that a hex-9 meets other specific criteria, at least 70% of the component hex-11s must meet the criteria. The Commission has taken a similar approach in the context of the 5G Fund, and we find it appropriate to apply that approach here for the mobile portion of the Alaska Connect Fund.²⁴⁴ No commenter provided any alternatives to determining how the geographic unit is covered if we apply an H3 system.

89. As detailed below, Alaska Connect Fund mobile provider participants must commit to serve the hex-9s that overlap with the areas that they now serve (under the Alaska Plan) and any additional areas, at the relevant speeds and technologies discussed below, and committed to in their Alaska Connect Fund performance plans.²⁴⁵

d. Eligible Providers and Areas

90. In this section, we set forth the requirements for eligible providers and eligible areas for the extended-support portion of the Alaska Connect Fund (i.e., single-support areas and duplicate-support areas under ACF Mobile Phase I). Eligible areas, including single- and duplicate-support areas, will be published in a map to ensure providers understand the extent of these areas for planning purposes. We also set forth a process for providers that were receiving support in areas now deemed ineligible to provide comparable service elsewhere to retain the same level of support under the Alaska Connect Fund.

(i) Eligible Providers

91. We limit eligibility for Alaska Connect Fund extended-support—i.e., support for single-support areas and for duplicate-support areas under ACF Mobile Phase I—to the current mobile provider participants of the Alaska Plan.²⁴⁶ Adopting this limit for single-support areas and for duplicate-support areas under ACF Mobile Phase I will properly leverage mobile providers with existing long-term commitments, the networks they already have in place, and the progress that they have already made pursuant to their commitments.²⁴⁷ Although we recognize some commenters' arguments for fair and equal access to Alaska Connect Fund for all providers,²⁴⁸ in balancing the needs of Alaskan consumers and the importance of leveraging the existing networks that were deployed in Alaska with universal service funds, we find the record supports our decision to limit eligibility to existing Alaska Plan mobile

(Continued from previous page) —————
data that are [publicly] and regularly available, the minimum service standard for mobile broadband data usage allowance will be 70 percent of the calculated average mobile data usage per household.” *Id.* at 3995, para. 94.

²⁴³ If it is the case that a hex-11 straddles a coastline or international boundary, the hex-11 will be considered to be part of the hex-9 if the hex-11's centroid lies within the boundary of the hex-9. In such cases, the total number of hex-11s in the hex-9 may deviate from the standard number of 49, and the percentage of served hex-11s in the hex-9 should be based on the smaller number of total hex-11s in the hex-9. For both the numerator and the denominator, the centroid—i.e., the geographic center point—of the hex-11 must fall within the boundary of United States or its territories to be counted. The total number of grandchild hex-11s of a hex-9 is typically 7x7, or 49. It would not be 49 when a hex-9 straddles an international boundary or coastline, for instance, and some its component hex-11s fall outside the United States or in coastal waters.

²⁴⁴ *5G Fund Second Report and Order* at 26-27, para. 46.

²⁴⁵ See *infra* Sections III D.2.d.iv. (Comparable Service Areas), III.D.2.e. (Deployment Goals and Commitments), III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

²⁴⁶ This eligibility limitation may not apply to duplicate-support areas covered by the proposed competitive mechanism for ACF Mobile Phase II and any future mechanism to disburse funds in unserved areas, depending on the outcome of the *Further Notice*. See *infra* Section V. (Further Notice of Proposed Rulemaking).

²⁴⁷ See NTCA Comments at 5.

²⁴⁸ ARIC Comments at 5; Quintillion Comments at 3-5; TAC Comments at 4; OptimEra Reply at 1, 3, 8; see also ABA May 16, 2024 *Ex Parte*.

provider participants.²⁴⁹ As detailed in the Further Notice, ACF Mobile Phase II and the unserved areas auction may allow participation by all qualifying competitive ETCs.²⁵⁰

92. *Opt In.* To participate in the 2016 Alaska Plan, competitive ETCs that met the eligibility criteria were deemed to have opted into the plan if they had submitted performance plans.²⁵¹ The *Alaska Connect Fund Notice* noted the opt-in process from the Alaska Plan and sought comment on whether to follow the same structure for determining participants in the Alaska Connect Fund.²⁵² No commenter offered a response in support of or against adopting the same opt-in process.

93. For the mobile providers participating in the Alaska Plan,²⁵³ we follow a similar process for opting into the Alaska Connect Fund.²⁵⁴ The eight mobile-provider participants of the Alaska Plan can opt into extended support under the Alaska Connect Fund for single-support and duplicate-support areas under ACF Mobile Phase I by submitting their performance plans to WTB for approval, consistent with the requirements of this Order, on or before September 1, 2026. Consistent with the Alaska Plan, we find opting in via submission of performance plans to be the appropriate step, as it requires an unambiguous affirmative step that signals providers' commitment in receiving the extended support.²⁵⁵ We require the submission of performance plans on or before September 1, 2026, as we find this date provides adequate time for providers to make an informed decision about their commitments under their performance plans before they are submitted.

94. We sought but did not receive comment on phasing down support for providers that do not opt into the Alaska Connect Fund.²⁵⁶ For Alaska Plan mobile providers that choose not to opt into the Alaska Connect Fund, their support will end with the Alaska Plan on December 31, 2026. If any

²⁴⁹ ATA Comments at 23; *see also* ARCC Reply at 15 (“A consideration of potentially adding new recipients to the Alaska Connect Fund creates several problems. Any dilution in Alaska Connect Fund distribution to existing Alaska Plan recipients threatens the financial viability of several of the ARCC members.” (footnote omitted)).

²⁵⁰ As discussed above, we do not alter the ETC requirement for Alaska Connect Fund mobile-provider recipients. *See supra* Section III.A. (Eligible Telecommunications Carrier Requirement). WTB may act on the unserved areas auction after the comments are received from the refreshed record, given the previous delegation from the *Alaska Plan Order*. Consistent with previous delegation, WTB has authority to otherwise determine the applicable procedures and performance requirements to implement a reverse auction (or other mechanism) for unserved areas after the comment period from the *Further Notice* ends. *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106 (“We further provide that the reverse auction will be subject to the competitive bidding rules codified at Part 1 Subpart AA of the Commission’s rules and delegate to the Wireless Telecommunications Bureau authority to otherwise determine the applicable procedures and performance requirements to implement the reverse auction as established today.”).

²⁵¹ 47 CFR § 54.317(f); *Alaska Plan Order*, 31 FCC Rcd at 10171, paras. 96-97 (“Competitive ETCs eligible for frozen support under the Alaska Plan will have a one-time opportunity to elect to participate in the Plan. We note that eight Alaskan mobile carriers have submitted proposed performance plans to the Wireless Telecommunications Bureau. Given that this Order is consistent with ATA’s proposal, subject to minor modifications, we presumptively consider these plan commitments to constitute an election to participate in the plan.”). Eight eligible providers opted into the Alaska Plan. *Alaska Plan Order*, 31 FCC Rcd at 10171, para. 97; *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx.

²⁵² *See Alaska Connect Fund Notice*, 38 FCC Rcd at 10026, paras. 96-97.

²⁵³ Eight wireless providers receive support for mobile service in remote Alaska: Arctic Slope Telephone Association Cooperative (ASTAC), Bristol Bay Cellular Partnership (BBCP), Copper Valley Wireless, Cordova Wireless, GCI Communication Corp., OTZ Wireless, TelAlaska Cellular, and Windy City Cellular. *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx.

²⁵⁴ *See Alaska Connect Fund Notice*, 38 FCC Rcd at 10026, para. 96.

²⁵⁵ *See Alaska Plan Order*, 31 FCC Rcd at 10171, para. 97.

²⁵⁶ *See Alaska Connect Fund Notice*, 38 FCC Rcd at 10034, para. 116.

providers do not have their final performance plans approved by WTB by December 31, 2026, those providers' support may be delayed.

95. *Ineligibility Due to Noncompliance.* An Alaska Plan mobile provider that opts into the Alaska Connect Fund may have its Alaska Connect Fund support delayed, or may be deemed ineligible from the Alaska Connect Fund, if WTB determines that the provider has failed to comply with the public interest obligations or other terms and conditions of the Alaska Plan or its Alaska Plan commitments, or failed to meet an Alaska Plan build-out milestone. In such case, WTB will notify the provider and give an opportunity to respond before support is delayed or the mobile provider is deemed ineligible for the Alaska Connect Fund.²⁵⁷ In the *Alaska Connect Fund Notice*, the Commission noted that a number of mobile providers failed to meet their interim commitments under the Alaska Plan, and asked whether eligibility to participate in the Alaska Connect Fund should be limited if a provider failed to meet its commitments.²⁵⁸ We agree with commenters that support some limits to the eligibility of providers who fail to meet their service thresholds and required obligations under the Alaska Plan.²⁵⁹ These include public interest obligations, such as timely data submissions, that could affect the assessment of whether providers have met all of their Alaska Plan obligations. As the Alaska Connect Fund is dependent upon BDC data, ongoing delays in full and proper submission of BDC data may also cause ineligibility in the Alaska Connect Fund.²⁶⁰

96. If an Alaska Plan provider is deemed ineligible for the Alaska Connect Fund, its support under the Alaska Plan will not be subject to phase down but will terminate at the end of the Alaska Plan (on December 31, 2026). For a provider deemed ineligible, we choose to end support, rather than phase it down, because the provider's ineligibility indicates an unwillingness or inability to meet the commitments the provider had already made—despite receiving high-cost support under the Alaska Plan for ten years. We do not consider it to be a responsible use of universal service funds to give support to providers under the Alaska Connect Fund when they did not comply with their previous obligations and are not providing the services they promised to deliver to their customers under the Alaska Plan.²⁶¹ Because the mobile portion of the Alaska Connect Fund acts as an extension of support (with new obligations), mobile providers must be in good standing to continue to receive support. We do not find it an efficient use of universal service funds to continue to give support to a provider that did not use its support within that time to meet its obligations. If WTB determines that an Alaska Plan mobile provider did not meet its Alaska Plan buildout obligations after the commencement of the Alaska Connect Fund, and also determines that the mobile provider is not eligible to receive Alaska Connect Fund mobile support, WTB can take all actions necessary to recover Alaska Connect Fund support, including those set forth in

²⁵⁷ 47 CFR § 54.320(c), (d).

²⁵⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10026, para. 97.

²⁵⁹ See OptimERA Reply at 10-11; AKPIRG Comments at 4.

²⁶⁰ We reiterate that *all* facilities-based providers, regardless of their participation in the Alaska Connect Fund, must submit timely and accurate data on a biannual basis to the BDC. 47 CFR § 1.7004(b) (stating that BDC filings are due each year on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year)). Accurate information about what services are available in Alaska supports the Commission's goals of determining the communities most in need of support.

²⁶¹ We disagree with GCI's suggestion that reducing Alaska Connect Fund support based on Alaska Plan performance, such as missing a performance benchmark, would be an "eleventh-hour change to the Alaska Plan." GCI Aug. 8, 2024 *Ex Parte* at 5. We recognize GCI's concern that the "Alaska Plan has its own sanctions regime, including time to remediate objectives not initially met and a sliding scale of sanctions." *Id.* We are not displacing the compliance obligations or any resulting "sanctions," as GCI refers to them, of the Alaska Plan. We are, however, determining eligibility to participate in the *new* Alaska Connect Fund, and we find compliance with the Alaska Plan obligations to be relevant to the determination of eligibility.

sections 54.320(c) and (d).²⁶² In addition, this does not impact any separate actions related to sections 54.320(c) and (d) with respect to the Alaska Plan final milestone.

97. We delegate authority to WTB to determine whether an individual Alaska Plan mobile provider is ineligible for the Alaska Connect Fund or will have its support under the Alaska Connect Fund delayed temporarily until it meets its outstanding obligations under the Alaska Plan, based on the mobile provider's compliance with Alaska Plan and BDC obligations. As part of this delegation, WTB may determine whether the provider is ineligible for the Alaska Connect Fund as a whole, whether it is ineligible for specific coverage areas based on noncompliance (and if ineligible in specific areas, to what extent its support will be reduced), or whether the provider is eligible to begin receiving Alaska Connect Fund support once it comes into compliance.

(ii) Eligible Areas for Support

98. We conclude that Alaska Connect Fund support can be used to provide mobile service anywhere in Alaska, except for the following areas, which are considered ineligible under the Alaska Connect Fund:²⁶³ (i) areas that were previously ineligible due to being in a nonremote²⁶⁴ or competitive area²⁶⁵ under the Alaska Plan; (ii) areas where an unsubsidized mobile provider is offering 5G-NR service at minimum speeds of 7/1 Mbps in an outdoor stationary environment based on BDC coverage data as of December 31, 2024; (iii) areas in which three or more mobile providers—with at least one of those providers being unsubsidized—are offering at least 4G LTE service at minimum speeds of 5/1 Mbps in an outdoor stationary environment based on BDC coverage data as of December 31, 2024; and (iv) areas deemed inaccessible or unsafe for testing. Extended support may be used to support last-mile mobile service in all areas of Alaska besides these ineligible areas, consistent with the mandate to ensure coverage where Americans live, work, and travel.²⁶⁶

99. In the *Alaska Connect Fund Notice*, while generally seeking comment on how to determine eligible areas for the mobile portion of the Alaska Connect Fund, we asked whether any changes needed to be made to the eligible areas criteria adopted in the Alaska Plan.²⁶⁷ We specifically sought comment on whether changes needed to be made to the requirement that an eligible area needed to have less than 85% of the population covered by 4G LTE service of providers that were either

²⁶² 47 CFR § 54.320(c), (d).

²⁶³ The new eligible area criteria apply only to the Alaska Connect Fund. Nothing in this Order changes the eligible areas for the mobile portion of the Alaska Plan.

²⁶⁴ 47 CFR § 54.307(e)(3)(i) (defining nonremote areas of Alaska); 47 CFR § 54.317(e); *see also* GCI Sept. 12, 2024 *Ex Parte* at 4 (requesting that the definition of remote areas from Alaska Plan be retained).

²⁶⁵ 47 CFR § 54.317(e) (“Frozen support allocated through the Alaska Plan may only be used to provide mobile voice and mobile broadband service in those census blocks in remote areas of Alaska . . . that did not, as of December 31, 2014, receive 4G LTE service directly from providers that were either unsubsidized or ineligible to claim the delayed phase down under § 54.307(e)(3) and covering, in the aggregate, at least 85 percent of the population of the block.”).

²⁶⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 48. The Alaska Plan required that mobile-provider participants meet population-based commitments. 47 CFR § 54.317(f). However, the *Alaska Plan Order* allowed frozen support to competitive ETCs to be used in any eligible area of Alaska. 47 CFR § 54.317(e); *Alaska Plan Order*, 31 FCC Rcd at 10165, para. 81 (“Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of mobile voice and broadband-capable networks, including middle-mile improvements needed to those ends. As long as an Alaska Plan participant is offering service in an eligible area, as defined below, and consistent with the public interest obligations delineated in this Order, service in that area will be eligible for support.”). Ineligible areas in the Alaska Plan were limited to non-remote areas and areas where unsubsidized or ineligible providers offered 4G LTE to 85 percent of the population of a census block as of December 31, 2014. *See* 47 CFR § 54.317(e).

²⁶⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10018, paras. 77-78.

unsubsidized or ineligible for frozen support as of December 31, 2014.²⁶⁸ We noted that in the *5G Fund Further Notice*,²⁶⁹ the Commission proposed to make ineligible those areas served with 5G-NR at speeds of at least 7/1 Mbps by an unsubsidized provider, and we sought comment on whether this proposal could apply to the Alaska Connect Fund.²⁷⁰ We also noted situations where as many as three mobile providers were receiving support and serving the same eligible area under the Alaska Plan, and asked how we should address situations in which two or more prospective participants in the Alaska Connect Fund cover the same geographic area.²⁷¹

100. While ATA asks the Commission not to remove support in areas where an unsubsidized provider offers service,²⁷² this is inconsistent with Commission policy to be fiscally responsible and to ensure that limited USF funding is used efficiently.²⁷³ We conclude that continuing to subsidize areas where there already is an unsubsidized competitor offering service is an inefficient use of limited resources, would not lead to a loss of service if funds were removed from the area, and could limit our ability to expand 5G coverage to as many Alaskan areas as possible.

101. Quintillion argues that the Alaska Connect Fund should support projects in the “same categories of eligible areas as the Alaska Plan, as defined by current data from the updated National Broadband Map and the State of Alaska’s Broadband Office Map, in order to foster competition and provide affordable service to low-income populations.”²⁷⁴ As an initial matter, we conclude that areas that were previously ineligible under the Alaska Plan will again be ineligible under the Alaska Connect Fund. We also update the category of ineligible areas based on receiving mobile service from an unsubsidized provider to account for the target technology and speed of the Alaska Connect Fund—5G-NR service of at least 7/1 Mbps in an outdoor stationary environment—based on information from the Commission’s National Broadband Map, as required by the Broadband DATA Act. We additionally classify as ineligible those areas with three or more mobile providers offering 4G LTE service of at least 5/1 Mbps in an outdoor stationary environment—with at least one of those providers being unsubsidized—for the same reasons we deem areas with an unsubsidized 5G-NR provider ineligible. Further, we deem ineligible those areas that are not able to be speed tested, as we find this consistent with the Commission’s responsibility to protect the success and integrity of our high-cost program.

²⁶⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10020, para. 82.

²⁶⁹ *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, 38 FCC Rcd 8908 (2023) (*5G Fund Further Notice*).

²⁷⁰ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10020-21, para. 82 (citing *5G Fund Further Notice*, 38 FCC Rcd at 8922, para. 17).

²⁷¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90.

²⁷² ATA Comments at 25; *see also* GCI Reply at 5-6; KPU Aug. 26, 2024 *Ex Parte* at 3 (citing ATA Comments at 25).

²⁷³ As we have noted in other contexts involving the USF, designing and adopting oversight and accountability measures ensures that the Commission meets its obligations under the Communications Act and facilitates its compliance with government-wide obligations for the efficient and effective design and implementation of federal programs. *See, e.g., Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund; ETC Annual Reports and Certifications*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5420, para. 64 n.85 (2018) (citing Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993) (requiring federal agencies to develop strategic plans with long-term, outcome-related goals and objectives, develop annual goals linked to the long-term goals, and measure progress toward the achievement of those goals in annual performance plans and to report annually on their progress in program performance reports) and GPRA Modernization Act of 2010, Pub. L. 111-352, 124 Stat. 3866 (2011)); *see also* 47 U.S.C. § 254(c)(1) (“Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”).

²⁷⁴ Quintillion Comments at 6.

102. *Areas that were Previously Ineligible in the Alaska Plan.* In the Alaska Plan, an area was deemed ineligible if it was a nonremote area²⁷⁵ or an area served by an unsubsidized or ineligible provider covering 85% of the census block with 4G LTE service as of December 31, 2014.²⁷⁶ The remote areas include all of Alaska except the ACS–Anchorage incumbent study area, the ACS–Juneau incumbent study area, the Fairbanks zone 1 disaggregation zone in the ACS–Fairbanks incumbent study area, and the Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area (collectively, the non-remote areas).²⁷⁷ For the remote areas that were ineligible due to an unsubsidized or ineligible provider offering 4G LTE as of December 31, 2014, an early version of the Alaska Population Distribution Model was used to identify and disqualify those blocks.²⁷⁸ No commenters in the record argue that previously ineligible areas should be eligible.²⁷⁹ Accordingly, we find that previously ineligible areas are also ineligible under the mobile portion of the Alaska Connect Fund.

103. *Areas that Offer Unsubsidized 5G-NR Service and Areas with Three or More Providers Offering at least 4G LTE Mobile Service with at least one Unsubsidized 4G LTE Provider.* Based on BDC availability data as of December 31, 2024, areas with an unsubsidized provider offering at least 7/1 Mbps 5G-NR in an outdoor stationary environment and areas with three or more mobile providers offering at least 5/1 Mbps 4G LTE in an outdoor stationary environment—with at least one of those providers being unsubsidized—are also ineligible for support. The Commission and the universal service program are not intended to subsidize competition.²⁸⁰ Providing high-cost support in areas where there is already competition with advanced mobile service runs contrary to universal service policy the Commission has advocated since the *USF/ICC Transformation Order*.²⁸¹ While the *Alaska Plan Order* contemplated that multiple subsidized 4G LTE mobile providers may arise in an area due to how the Alaska Plan operated,²⁸² areas that already have an unsubsidized mobile provider that offers at least 5G-NR at 7/1 Mbps or three or more mobile providers that offer at least 4G LTE at 5/1 Mbps in an outdoor stationary environment—with at least one of those providers being unsubsidized—are evidence that the area does not need support to yield private-sector investment—there is already competition in that area.²⁸³

104. First, as the Alaska Connect Fund seeks to ensure 5G-NR is deployed to remote Alaskans that would not otherwise have such service, areas where 5G-NR is already deployed *without* use of support demonstrates that high-cost support is unnecessary for such deployment in that area. This approach mirrors our approach in the Alaska Plan, in which we determined that areas covered by

²⁷⁵ 47 CFR § 54.307(e)(3)(i); *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 87.

²⁷⁶ *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 87.

²⁷⁷ 47 CFR § 54.307(e)(3)(i); *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 87, n.176.

²⁷⁸ See *Wireless Telecommunications Bureau Seeks Comment on Population Distribution Model and Eligible Census Block List to be Applied in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 1520, 1521, para. 4 (WTB 2020).

²⁷⁹ See generally WC Docket No. 23-328.

²⁸⁰ See, e.g., 47 CFR § 54.319; *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90; *Alaska Plan Order*, 31 FCC Rcd at 10169, para. 92; *USF/ICC Transformation Order*, 26 FCC Rcd at 17780, paras. 148 n.238, 319; see also 47 U.S.C. § 254(k) (prohibiting telecommunications carriers from using services that are not competitive to subsidize services that are subject to competition).

²⁸¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17722, 17780, paras. 149 n.238, 319.

²⁸² *Alaska Plan Order*, 31 FCC Rcd at 10169-70, 10174-75, paras. 92-94, 107-112 (recognizing the potential for overlap of 4G LTE service as eligible carriers upgrade their networks to 4G LTE to meet their performance commitments under the Alaska Plan).

²⁸³ See *supra* Section III.D.2.a. (Support Term and Timing).

unsubsidized providers of 4G LTE (the target technology at the time) were ineligible for support.²⁸⁴ Here, we update those ineligibility criteria based on the target technology and speed for the mobile portion of the Alaska Connect Fund and other high-cost support mechanisms, consistent with our proposal.²⁸⁵

105. Likewise, an area that already has three or more providers offering at least 4G LTE service at 5/1 Mbps in an outdoor stationary environment—with at least one of those providers being unsubsidized—indicates that there is a private-sector case for the area. At least one unsubsidized provider in the area is attempting to make that case even with at least two other mobile providers potentially receiving a subsidy while competing against the unsubsidized provider. It is not consistent with the principles of the universal service program to attempt to pick winners and losers in that market by subsidizing competition against a provider that needs no such subsidy to offer comparable services while competing against not just one provider but at least two other providers in that market. As such, where there are three mobile providers of at least 4G LTE service at 5/1 Mbps in an area—with at least one of those providers being unsubsidized—there are private sector incentives to offer advanced mobile services to those areas, and we remove them from eligibility for high-cost mobile support.²⁸⁶ We will, however, allow mobile providers that currently receive support under the Alaska Plan for covering these areas that are newly deemed ineligible to retain their support if they commit to cover a comparable uncovered area in place of the newly ineligible areas. We outline the requirements and process for providers to submit their comparable service areas below.²⁸⁷

106. *Areas Unable to be Tested.* In the *Alaska Connect Fund Notice*, we sought comment on any changes we should consider in determining which areas would be eligible for support in the Alaska Connect Fund, and we did not receive any comments on how to address the areas in Alaska that are unable to be tested.²⁸⁸ Given the lessons learned from the Commission's implementation of the Alaska Plan, areas that are unable to be tested are also ineligible for Alaska Connect Fund support.

107. In the Alaska Plan, providers receiving over \$5 million annually in high-cost support were required to support their milestone submissions with data from drive tests showing mobile transmissions to and from the network meeting or exceeding the speeds delineated in the approved performance plans.²⁸⁹ These drive tests could be conducted by means other than in automobiles on roads, recognizing the unique terrain and lack of road networks in Alaska.²⁹⁰ Providers could demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered.²⁹¹ In addition, some of the providers receiving \$5 million or less annually were subject to drive

²⁸⁴ *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 87; *Alaska Connect Fund Notice*, 38 FCC Rcd at 10020-21, para. 82.

²⁸⁵ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10020-21, para. 82 (citing to *5G Fund Further Notice*, 38 FCC Rcd at 8922, para. 17); *5G Fund Second Report and Order* at 17-18, para. 27.

²⁸⁶ As noted above, areas where there are multiple Alaska Plan mobile providers receiving support remain eligible as duplicate-support areas, except where there are three or more providers offering 4G LTE with at least one unsubsidized provider, as specified in this section. See *supra* Section III.D.2.a. (Support Term and Timing).

²⁸⁷ See *infra* Section III.D.2.d.iv. (Comparable Service Areas).

²⁸⁸ See generally WC Docket No. 23-328.

²⁸⁹ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

²⁹⁰ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

²⁹¹ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103. To determine what would amount to a demonstration of coverage of an area with a statistically significant number of tests in the vicinity of residences being covered, WTB and OEA created a drive test methodology for statistically significant sampling for purposes of the Alaska Plan. See *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order and Request for Comment, 37 FCC Rcd 5882, 5924, Appx. B (WTB 2022) (*Alaska Plan Drive Test Order*).

test auditing by USAC.²⁹² During the course of drive testing, FCC staff learned that some areas were, in reality, inaccessible or unsafe for testing, despite the fact that: (i) the Alaska Population Distribution Model²⁹³ indicated that those areas were populated, (ii) the FCC Form 477 data indicated that the provider had coverage over that population, and (iii) the performance plans indicated that the providers were receiving credit for providing coverage to the population included in those areas.²⁹⁴ However, when drive testing was attempted to be performed in these areas, the areas were not able to be tested and were not accessible for testing,²⁹⁵ and other accommodations had to be made, such as by allowing an uncrewed aircraft system (UAS) to test these areas.²⁹⁶

108. Where areas are inaccessible or unsafe for testing, we will consider them inaccessible or unsafe for consumer usage and do not allow support to be used for those areas. This is consistent with the principle that mobile high-cost support should be available where people “live, work, or travel.”²⁹⁷ Moreover, to protect the success and integrity of the ACF, all support areas must be verifiable, and areas that cannot be tested cannot be verified. Consequently, areas that cannot be tested practically and safely are ineligible.

109. In determining whether an area is ineligible under this category, we allow areas that can be tested with an uncrewed aircraft (UA) to be considered eligible for Alaska Connect Fund purposes, so long as such testing is possible and otherwise permissible.²⁹⁸ People frequently travel and visit areas where there are no Fabric locations, such as along roads, snow mobile routes, hunting areas, bodies of

²⁹² *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 105.

²⁹³ See *Alaska Population Distribution Model Order*, 35 FCC Rcd at 10373-77, paras. 1, 4-6, 9-11.

²⁹⁴ See, e.g., *Connect America Fund—Alaska Plan*, GCI Communication Corp. Petition for Limited Expedited Waiver in the Alaska Plan for Drive-Test Data Collection, WC Docket No. 16-271, Order, 38 FCC Rcd 6694, 6698, para. 9 (WTB 2023) (noting some areas had limited ability to access or were unsafe); *Connect America Fund—Alaska Plan*, GCI Communication Corp. Petition for Limited Waiver in the Alaska Plan to Permit Use of Unmanned Aircraft Systems for Drive-Test Data Collection, GCI Communication Corp. Request for Limited Waiver of 47 CFR § 22.925, WC Docket No. 16-271, 37 FCC Rcd 10173, 10176, para. 9 (WTB 2022) (*GCI Waiver Request Order*).

²⁹⁵ See, e.g., *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 37 FCC Rcd 7960 (WTB 2022) (allowing Alaska Plan provider to submit speed tests in proxy grid cells where, *inter alia*, original grid cells selected for speed testing were too difficult to test).

²⁹⁶ See *GCI Waiver Request Order*, 37 FCC Rcd at 10176-77, para. 9. An uncrewed aircraft system (UAS) is defined as an “[uncrewed aircraft (UA)] and its associated elements (including an uncrewed aircraft station, communication links, and the components not on board the UA that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States.” *Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems*, WT Docket No. 22-323, Report and Order, FCC-24-91, at 5, para. 11 n.25 (rel. Aug. 29, 2024) (citing 14 CFR § 1.1).

²⁹⁷ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, 17682, paras. 4-5.

²⁹⁸ In the event UAS is used for speed testing in the Alaska Connect Fund, we require that such tests meet the following requirements, similar to requirements adopted by WTB in the Alaska Plan context: UASs should mirror on-the-ground testing (outdoor stationary environment) and flying at the lowest, safest possible elevation, to best reflect on-the-ground usage. Additionally, UASs performing speed tests must: (1) at all times operate at less than 200 feet above ground in remote areas of Alaska where road-based testing is impractical/impossible; (2) limit power to the minimum necessary to accomplish testing; and (3) upon receipt of a complaint of interference from a co-channel licensee, notify the Commission and either remedy the interference or cease operations. See *Alaska Plan Drive Test Order*, 37 FCC Rcd at 5897, para. 29. Moreover, “[t]o the extent that a mobile provider seeks to use UASs to conduct testing, it may do so if the allocation and service rules permit airborne use of the spectrum that will be used to provide the mobile service to be tested as part of the drive tests. Otherwise, the provider must additionally obtain a waiver from the Commission (pursuant to section 1.925) of any airborne limitations.” *Id.* at 5897-98, para. 30 (footnotes omitted).

water, or hiking trails.²⁹⁹ In Alaska, some areas where people can “live, work, or travel” can cause safety concerns for network testing purposes that can be addressed by UA testing. As such, while we may require only on-the-ground testing in some areas, we will allow UA testing as a safe means to test other areas in Alaska for Alaska Connect Fund purposes when UA usage is otherwise permissible.³⁰⁰ This action is consistent with past Commission orders recognizing the “unique challenges of providing communications services in rural Alaska”³⁰¹ that are not applicable to mobile providers in other parts of the United States.³⁰²

110. As detailed below, providers can be required to test any hex-9 they commit to cover under the Alaska Connect Fund. Hex-9s that are inaccessible during all seasons or are a safety hazard to test at all times of the year are ineligible for support, and providers can voluntarily submit any areas to WTB at the hex-9 level they believe should be deemed ineligible because they cannot be tested or tested safely.³⁰³ It is the providers’ responsibility to know that they are using support consistent with these requirements. Where a provider claims credit for hex-9s in its coverage areas, providers may lose support in proportion to the hex-9s that are later deemed ineligible. Again, providers who currently receive support under the Alaska Plan for these areas newly deemed ineligible under the Alaska Connect Fund may commit to cover comparable uncovered areas in order to retain their support, as discussed below.³⁰⁴

(iii) Eligible-Areas Map

111. To ensure that all providers fully understand which areas are eligible and ineligible for Alaska Connect Fund mobile support, and of those that are eligible, which are in duplicate-support, single-support, or other eligible areas,³⁰⁵ we delegate authority to WTB, in coordination with OEA, to publish a map or maps of these areas and seek comment on such maps. The map or maps would identify all such areas on a hex-9 basis. We direct WTB, in coordination with OEA, to publish the preliminary map or maps, based on mobile providers’ BDC mobile availability data as of December 31, 2024, no later than October 1, 2025. The map or maps will rely on BDC data and information learned about the areas. Such a map or maps will help reduce any potential misunderstandings regarding where a provider is permitted to use support. Mobile providers seeking support under the Alaska Connect Fund must use the Eligible-Areas Map to determine the areas in Alaska that are eligible for support.

112. We delegate authority to WTB, in coordination with OEA, to seek comment on the maps’ accuracy, to resolve any disputes that may arise over the classification of an area, and to seek comment on

²⁹⁹ See, e.g., *infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

³⁰⁰ *GCI Waiver Request Order*, 37 FCC Rcd at 10176-77, paras. 8-9 (2022) (allowing UAS speed testing where testing was otherwise too dangerous or difficult).

³⁰¹ *GCI Waiver Request Order*, 37 FCC Rcd at 10173, para. 2; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 507 (“We appreciate and recognize that Alaska faces uniquely challenging operating conditions, and agree that national solutions may require modification to serve the public interest in Alaska.”).

³⁰² Consistent with past Commission findings related to Alaska, allowing mobile providers to conduct speed tests by UAS will only be applicable to Alaska mobile providers and may only be used in connection with Alaska Connect Fund matters. All mobile providers, including those mobile providers serving Alaska, must continue to comply with speed test rules and procedures applicable to the BDC.

³⁰³ Providers should communicate which areas should be deemed ineligible, both before and after the Eligible-Areas Map is published for comment, by emailing ACF@fcc.gov. Providers that discover inaccessible or unsafe areas after their performance plans have been approved must work with WTB to provide comparable hex-9 coverage elsewhere for the same support.

³⁰⁴ See *infra* Section III.D.2.d.iv. (Comparable Service Areas).

³⁰⁵ Eligible areas that are not identified as duplicate-support or single-support areas will be noted as “other eligible areas,” until otherwise classified throughout the course of the Alaska Connect Fund.

the Eligible-Areas Map(s) after it is published on or before October 1, 2025.³⁰⁶ We also delegate authority to WTB, in coordination with OEA, to release, in conjunction with release of the Eligible-Areas Map(s), information on the eligible mobile providers' hex-9 coverage (e.g., number of hex-9s each provider covers by census tract; number of hex-9s in ineligible areas) based on mobile providers' Broadband Data Collection availability data as of December 31, 2024, if WTB, in coordination with OEA, finds such information to be necessary for development of mobile providers' performance plans. In addition, we delegate authority to WTB, in coordination with OEA, to seek comment periodically to update the map(s) throughout the course of the Alaska Connect Fund, as necessary. For example, this could occur as new areas that are deemed inaccessible for testing are discovered, as uncovered areas become "single-support areas" under the comparable service area mechanism,³⁰⁷ or to reflect later vintages of BDC availability data, as appropriate.

(iv) Comparable Service Areas

113. We will allow Alaska Connect Fund mobile-provider participants that will no longer receive support for a newly ineligible area or areas to continue receiving the same level of support *if* they cover a comparable number of hex-9s elsewhere. We set forth the parameters for covering a comparable number of hex-9s below.

114. In the *Alaska Connect Fund Notice*, we asked, in the context of duplicate support, whether we should "allow the providers that would no longer receive support for that particular area to submit new hex-9s (where there is no duplication), in order to retain the same level of support."³⁰⁸ Because the extended support under the Alaska Connect Fund (i.e., for single-support areas and duplicate-support areas under ACF Mobile Phase I) is intended to give providers certainty of support for network planning and deployment, we find it reasonable to give mobile providers an opportunity to retain support even if areas that they cover become newly ineligible under the extended support for Alaska Connect Fund. We will not, however, allocate all of the Alaska Plan mobile provider's support to its remaining eligible areas, as ATA suggests,³⁰⁹ because we find that it would not be a prudent and efficient use of high-cost support to provide the same support to offer less coverage. Moreover, even though we set higher deployment goals under the Alaska Connect Fund, the 30% support increase—which begins in January 2025 and extends through the duration of the Alaska Connect Fund—is intended to address a provider's deployment and service needs for its entire coverage area. If a provider is no longer eligible to receive support for certain areas in its coverage area, it must cover additional areas to maintain the same level of support.

115. *Determining Comparable Areas Before Performance Plan Submission.* To retain support, providers currently receiving support under the Alaska Plan for coverage of newly ineligible areas must use their Alaska Connect Fund support to cover a comparable number of otherwise

³⁰⁶ To the extent that such inaccessible hex-9s are discovered after performance plans have been approved by WTB, providers must cover a comparable number of eligible hex-9s elsewhere in order to receive the same level of support, consistent with the process outlined below for determining "comparable areas." See *infra* Section III.D.2.d.iv. (Comparable Service Areas). Providers are to communicate which areas should be deemed ineligible by emailing ACF@fcc.gov as soon as such areas are known by the provider.

³⁰⁷ See, e.g., *infra* Section III.D.2.d.iv. (Comparable Service Areas).

³⁰⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025, para. 94. While commenters did not directly address this question, ATA asked the Commission—if it were to remove support in areas with unsubsidized providers, for example—"to allocate all of the Alaska Plan mobile provider's existing support (adjusted for inflation) to areas without unsubsidized competitors." ATA Comments at 25 (noting that "[s]uch an approach would be consistent with Commission practice in prior proceedings 'declin[ing] to adopt a disaggregation method that assumes that support is allocated uniformly' across a supported provider's service area").

³⁰⁹ ATA Comments at 25.

uncovered³¹⁰ hex-9s elsewhere, subject to claw back in their support if they do not do so. To be considered “comparable,” we expect a provider to cover the same number of uncovered hex-9s as the number of hex-9s that were ineligible, unless the mobile-provider participant of the Alaska Connect Fund can provide justification that a lower number of hex-9s that it would be covering elsewhere is “comparable” to the number of newly ineligible hex-9s, as described below. If, for example, the Eligible-Areas Map³¹¹ reveals that 100 hex-9s that an Alaska Plan mobile provider was covering are deemed ineligible in the Alaska Connect Fund, then that provider would have to commit to cover 100 different hex-9s that are shown as uncovered in the Eligible-Areas Map (or a lower number of hex-9s, if it justifies why a lower number is still comparable). If it does not commit to cover a comparable number of hex-9s, the provider may not retain the same level of support it was receiving for the 100 hex-9s that are ineligible.

116. Providers must incorporate their comparable areas into their performance plans under the Alaska Connect Fund, for WTB approval. Specifically, each mobile provider must remove the ineligible hex-9s from its commitment, and in a separate category in the performance plan, specify how many comparable hex-9s it commits to cover, by census tract, as detailed below.³¹² We delegate authority to WTB, in coordination with OEA, to work with providers in their submissions of “comparable number of hex-9s” to meet the requirements of this section. Where a provider commits to cover the same number of uncovered hex-9s, that will be considered a safe harbor, and a provider will have such coverage deemed “comparable” to the coverage where it no longer has support. However, if a provider wishes to commit to fewer hex-9s than the number of hex-9s that were deemed ineligible, it must demonstrate why this lower number constitutes “comparable” coverage. For instance, a provider may demonstrate that the newly covered, fewer number of hex-9s contain the same value or more than the newly ineligible hex-9s because they cover more BSLs or area of significance to the local community. We delegate authority to WTB, in coordination with OEA, to make the determination of whether a provider is covering a “comparable number of hex-9s.”

117. Once approved, comparable areas will be treated as part of the provider’s single-support areas, subject to the deployment obligations and performance requirements for those areas. Where an Alaska Connect Fund recipient covers a new, uncovered hex-9, it will be considered a single-support area attributed to the provider that shows coverage to that hex-9 first, based on BDC data. In the event both providers first report coverage for the same area in the same data set or one provider’s earlier filed data is deemed inaccurate, the hex-9 will be considered a single-support area attributed to whichever provider has its updated performance plan accepted first.

118. We delegate authority to WTB, in coordination with OEA, to resolve any ambiguities to the classification of support areas as ineligible, duplicate-support, single-support areas, and other eligible areas—including for “comparable areas”; to determine which provider receives support in an area if such ambiguities arise during the course of the Alaska Connect Fund, as discussed above; and to determine support amounts for these areas, as needed, after opportunity for public comment on this issue in response to the Further Notice.³¹³ Where an Alaska Plan mobile-provider participant does not have an updated performance plan approved by WTB with comparable areas for the Alaska Connect Fund, that provider will have its proportional support phased down, beginning 90 days after being notified by WTB that it is receiving support in an ineligible area or by January 1, 2027, whichever is later. Mobile-provider

³¹⁰ An uncovered hex-9 is a hex-9 in an eligible area that is not covered by another mobile provider. *See supra* Section III.D.2.c. (Determining Coverage Areas for the Alaska Connect Fund).

³¹¹ *See supra* Section III.D.2.d.iii. (Eligible-Areas Map).

³¹² *See infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

³¹³ *See supra* Section III.D.2.d.iii. (Eligible-Areas Map); *see also infra* Section V.A. (Determining Support Amounts by Area).

participants that have new performance plans with comparable areas approved by WTB may receive restoration of the support that was phased down for the areas that the comparable areas replaced.

119. *Determining Comparable Areas After Performance Plans.* Recipients of ACF mobile extended support may need to cover a comparable number of hex-9s at different times after initial performance plans are accepted and during the course of the Alaska Connect Fund, if an area of inaccessible hex-9s is discovered. For areas where providers may lose support because an area is deemed ineligible *after* their performance plan has been accepted, providers will still have an opportunity to retain support by committing to cover a comparable number of uncovered hex-9s elsewhere. For example, if a provider committed to cover 100 hex-9s and is covering exactly 100 hex-9s, and 10 of that provider's hex-9s are deemed inaccessible for testing, then the provider must meet its Alaska Connect Fund commitment by covering 10 new hex-9s (unless it justifies that a lower number of hex-9s are comparable) and reflect that and the census tract where it is covering the comparable hex-9s in an updated performance plan. The mobile provider must provide a notation in the performance plan for the comparable hex-9s, identifying in which census tracts the ineligible hex-9s are located and how many of those hex-9s are being replaced by any particular group of comparable hex-9s. We delegate authority to WTB, in coordination with OEA, to require additional clarifying information that allows identification and determination of which comparable hex-9s are replacing which group of ineligible hex-9s. As providers discover ineligible hex-9s after their performance plans are approved, they must remove those ineligible hex-9s from their hex-9 commitments in their performance plans and reflect the new number of comparable hex-9s in the comparable hex-9 commitments category in their new, proposed performance plans. The providers must submit new performance plans whenever they need new comparable hex-9s approved.³¹⁴ Where two providers cover the same hex-9s and one provider claims that the area is inaccessible for testing, but the other provider does not, the area would become a part of the latter provider's single-support area, and the former provider would have to cover the same number of hex-9s elsewhere.

120. All inaccessible hex-9s and updated performance plans must be submitted to WTB before the buildout milestones are due. If providers discover some areas are inaccessible during required speed testing or during an audit, the provider will be in noncompliance for those hex-9s, and potentially additional hex-9s if the inaccessible hex-9s were selected through random sampling. If this noncompliance is discovered for the interim milestone testing, the provider may identify, in an updated performance plan, comparable hex-9s that it will serve. If the provider's updated performance plan is not approved within 90 days of the provider being notified that it is covering ineligible hex-9s because those hex-9s cannot be tested, then the provider will have a proportional amount of support phased down. If the provider's updated performance plan for covering comparable hex-9s is approved after 90 days, it may have any support that was phased down restored.

121. Just as with determination of comparable areas before submission of performance plans, we delegate authority to WTB to work with providers in their submissions of "comparable number of hex-9s" after their initial performance plans, as necessary, to meet the requirements of this section. We also delegate authority to WTB to determine whether a provider is covering a "comparable area," and to resolve any ambiguities with respect to coverage and/or any amount of support that should be withheld if a provider does not cover a comparable area.

e. Deployment Goals and Commitments

122. *Minimum Provision of Service.* In addition to the increased speed goals we adopt in this Order, Alaska Connect Fund mobile support recipients must provide service with at least the same minimum service levels as required under the Alaska Plan and may not provide less coverage or provide service using a less advanced technology than the provider committed to under the Alaska Plan.

³¹⁴ See *infra* Section III.D.2.f. (Submission of Alaska Connect Fund Performance Plans).

123. Under the Alaska Plan, mobile-provider participants were required to provide stand-alone voice service and, at a minimum, offer to maintain the level of data service they were providing as of the respective dates their individual plans were adopted by WTB.³¹⁵ They were also required to improve service consistent with their approved performance plans through December 31, 2026.³¹⁶ In the *Alaska Connect Fund Notice*, we raised this public-interest obligation and sought comment on what, if any, changes we should make to this and other public interest obligations from the Alaska Plan.³¹⁷ As a general matter, commenters acknowledge the importance of maintaining existing service with the Alaska Connect Fund.³¹⁸ While some commenters argue against a stand-alone voice requirement,³¹⁹ others support this requirement as a “bedrock principle.”³²⁰

124. In order to maintain the progress made under the Alaska Plan—and to ensure that Alaskans in remote areas maintain the same or better level of service—we require Alaska Connect Fund mobile-support recipients to continue to maintain the minimum service levels—to the same areas—that they achieved under the Alaska Plan. All Alaska Connect Fund mobile-support recipients must continue to meet all of the public-interest obligations of the Alaska Plan and must not reduce service to Alaskans. This includes continuing to provide voice service, as required of all ETCs, to maintain at least the level of data service they are providing to their previous coverage areas as of the end of the Alaska Plan, and to improve service consistent with their approved performance plans through the end of Alaska Connect Fund. We delegate authority to WTB to compare BDC availability data as of December 31, 2026 with subsequent BDC availability data to ensure that mobile voice and mobile broadband service levels and coverage are maintained or improve in all previously served areas.

125. *Deployment Goals.* To receive Alaska Connect Fund mobile support for single-support areas and for duplicate-support areas under ACF Mobile Phase I, Alaska Plan mobile-provider participants must submit performance plans to WTB on or before September 1, 2026, for approval. The Alaska Plan had a goal of achieving universal 4G LTE,³²¹ and providers in the most competitive areas of Alaska committed to provide 4G LTE at 10/1 Mbps by December 2026.³²² To ensure the effective use of Alaska Connect Fund support, we expect that, where technically and financially feasible, participants in single-support areas will work to extend 5G service to populations who are currently served by 4G LTE or less, and that providers in duplicate-support areas will work to extend by the end of December 2029 at

³¹⁵ *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 77.

³¹⁶ *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 77.

³¹⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 1033-34, para. 114.

³¹⁸ See, e.g., ATA Comments at 24-25; GCI Reply at 3-4.

³¹⁹ ARIC Comments at 2-6; SpaceX Reply at 1, 5.

³²⁰ ARCC Reply at 10 (in the context of fixed services).

³²¹ *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86 (“We expect that Alaska Plan participants will work to extend 4G LTE service to populations who are currently served by 2G or 3G. However, we recognize that there are unique limitations to extending 4G LTE—and in certain locations 3G—in remote Alaska due to infrastructure and the cost of upgraded middle mile.”).

³²² *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102 (creating additional obligations where providers could not commit to 4G LTE at 10/1 Mbps). Six of the eight mobile providers have been able to commit to providing 4G LTE at 10/1 Mbps to at least some of their service area by December 31, 2026. See *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13320-23, Appx. (providing the operative performance plans for Copper Valley Wireless, Cordova Wireless, and OTZ Wireless); *ASTAC Revised Performance Plan Public Notice*, 34 FCC Rcd 12183, 12184 (WTB 2019) (approving ASTAC’s operative performance plan); *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9540 (providing the operative performance plan for GCI); *Three Updated Alaska Performance Plans Public Notice* (providing Bristol Bay Cellular Partnership’s, TelAlaska Cellular’s, and Windy City Cellular’s operative performance plans).

least 4G LTE at 5/1 Mbps in an outdoor stationary environment to areas where they do not currently offer it.³²³ For single-support areas, providers participating in the Alaska Connect Fund are expected to use Alaska Connect Fund support to upgrade service beyond the service commitment level they made in the Alaska Plan, with an ultimate goal of achieving 5G NR at 35/3 Mbps in single support areas, where technically and financially feasible, by the end of December 2034.³²⁴ Regardless of the service-level commitment in the performance plan, we expect providers of single-support areas to report on the steps they have taken towards the commitments under their respective performance plans by December 31, 2029, meet interim commitments by December 31, 2031,³²⁵ and meet final commitments by December 31, 2034.

126. The Commission's speed goals for single- and duplicate-support areas align with BDC standards for the supported technologies.³²⁶ As explained fully below, we have different performance goals for single-support areas and for duplicate-support areas because of the potential for support changes in duplicate-support areas, and because in duplicate-support areas there is already competitive pressure to offer service beyond the Commission's goal for single-support areas. We recognize that there may be some circumstances where a provider may be unable to meet these goals.³²⁷ We delegate authority to WTB, in coordination with OEA, to accept lesser commitments in some areas as warranted on a case-by-case basis, as discussed below.³²⁸

127. We encourage Alaska Plan providers that opt into the Alaska Connect Fund to begin deploying 5G-NR as soon as possible. Technology commitments in the Alaska Plan performance plans are minimum technology commitments, so where a provider installs 5G-NR before the end of the Alaska Plan as it works to meet its Alaska Connect Fund commitments, 5G-NR can count toward its 4G LTE commitment under its Alaska Plan performance plan (i.e., it will receive credit for having met 4G LTE under the Alaska Plan).³²⁹

³²³ We require a lesser, minimum standard in duplicate-support areas because providers in such areas are more likely to provide higher speeds and technology, and we do not require further obligations where mobile providers may lose their support due to an upcoming competitive process. See *infra* paras. 133-34 and Further Notice.

³²⁴ See GCI Oct. 23, 2024 *Ex Parte*; ARCC Oct. 13, 2024 *Ex Parte* (discussing the "35/3 target in 2034 for wireless providers and appropriate first milestone dates for the ACF wireless metrics").

³²⁵ See GCI Oct. 23, 2024 *Ex Parte* ("Give mobile providers five years from the start of their performance plans to upgrade and deploy services by setting 2031 as the first performance plan milestone for the mobile participants."). We only apply the December 31, 2031 interim milestone to single-support areas, given the tendency for those areas to have better service and need to reevaluate allocation of support to those areas; ARCC Oct. 13, 2024 *Ex Parte* ("[a]ny timing earlier than 2031 should be considered premature due to competing with wireless carriers in the lower 48 for access to the '5G supply chain' in a geography that is furthest from the source for virtually every component"; "[a]ny milestones set before 2031 risk ignoring that many BEAD projects will require three or four years of permitting"). See *infra* paras. 133-34.

³²⁶ 47 CFR § 1.7004.

³²⁷ See *infra* Section III.D.3. (Additional Public Interest Obligations).

³²⁸ See *infra* Section III.D.3. (Additional Public Interest Obligations). We also note that there will be a strong presumption against approving commitments of less than 4G LTE at speeds of 5/1 Mbps in an outdoor stationary environment for any milestone.

³²⁹ See, e.g., *Alaska Plan Drive Test Order*, 37 FCC Rcd at 5907, para. 57 ("[W]here a provider has committed to multiple tiers of technology (i.e., 2G, 3G, and 4G LTE), any excess coverage would be applied to the next lower tier of technology."). While a higher technology can meet the technology requirement for older generation technology, the provider would still need to meet the speed requirement it commits to in the Alaska Plan. In other words, for purposes of determining compliance with the Alaska Plan final milestone, 5G-NR with 10/1 Mbps minimum speeds can meet the requirement for a commitment of 4G LTE with a minimum 10/1 Mbps speed commitment, but 5G-NR provided at 7/1 Mbps would not satisfy the speed commitment of 10/1 Mbps. With that said, if a provider upgrades to next generation technology before the end of the Alaska Plan, but does not meet its final Alaska Plan speed

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128. *Single-Support Area Minimum Deployment Standards.* Providers are expected to commit, where technically and financially feasible, to offer 5G-NR in order to receive support under the Alaska Connect Fund in single-support areas. Deployment of 5G-NR in these areas is important to ensure that Alaskans have access to the level of advanced communications that other consumers enjoy in the United States. We also find that such a goal is reasonable in light of the longer-term guaranteed support in these areas through the end of 2034.

129. In the *Alaska Connect Fund Notice*, the Commission sought comment on the level of service that should be expected from mobile providers under the Alaska Connect Fund.³³⁰ In response, some commenters caution against applying a one-size-fits-all deployment benchmark in Alaska, and they recommend adopting standards tailored to each area that are flexible and that consider the unique difficulties associated with deploying in the area.³³¹ At least one other commenter supports adoption of uniform service standards.³³² Comments from Alaska Plan participants recognize that the next phase of high-cost support in Alaska should aim for deployment of 5G.³³³

130. We agree with commenters on the importance of using Alaska Connect Fund support to migrate to 5G-NR,³³⁴ and we expect providers to deploy 5G-NR in their single-support areas where technically and financially feasible. The high-cost Universal Service Fund provides support to ensure that advanced communications services are available to all areas of the United States,³³⁵ and 5G-NR is currently the universal service technology standard throughout the rest of the United States.³³⁶

131. We find it reasonable to expect providers in single-support areas to offer 5G-NR where technically and financially feasible in exchange for support through 2034. The Alaska Plan's emphasis was on Alaska Plan participants "work[ing] to extend 4G LTE service to populations that are currently served by 2G or 3G."³³⁷ Six of the eight mobile providers of the Alaska Plan will have 100% 4G LTE by December 31, 2026.³³⁸ Some of the 4G LTE equipment that has been deployed is capable of 5G-NR, but

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commitment, we direct WTB to consider all relevant factors in determining Alaska Plan compliance, including the investment the provider has made in the newer technology.

³³⁰ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10030, para. 106.

³³¹ See ARCC Comments at 28; NTCA Comments at 9-10; WTA Comments at 3-4; Pacific Dataport Reply at 1; see also APT Comments at 16 ("[T]he FCC must recognize it will take Alaska longer to achieve the same level of service as other locations in America due to the many challenges discussed throughout these comments. The FCC should allow for significant flexibility in the time to achieve desired levels of service.").

³³² SpaceX Reply at 3-4.

³³³ See ATA Comments at 28 (noting that "5G is the future and the Commission is appropriately setting its targets on how to make that a reality for remote Alaskans"); GCI Comments at 1 (citing the opportunity to "build on the successes of the Alaska Plan and bring high-speed fixed services and 5G wireless to more Alaskans"); GCI Reply at 3 (noting that GCI "fully supports a focus on bringing 5G service to as many areas as possible, but without sacrificing coverage, service quality, or public safety").

³³⁴ See ATA Comments at 2, 22, 28; ATA Reply at 14; GCI Comments at 1; GCI Reply at 1, 3, 4 & n.9.

³³⁵ 47 U.S.C. § 254(b)(2).

³³⁶ *5G Fund Second Report and Order* at 5-6, para. 8; *5G Fund Further Notice*, 38 FCC Rcd at 8912-13, para. 6.

³³⁷ *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86.

³³⁸ See *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx. WTB subsequently approved revised performance plans for ASTAC, GCI, Bristol Bay Cellular Partnership, TelAlaska Cellular, and Windy City Cellular. See *ASTAC Revised Performance Plan Public Notice*, 34 FCC Rcd at 12184 (approving ASTAC's operative performance plan); *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9540 (approving the current operative plan for GCI, which commits to cover 8,622 Alaskans with 3G and 10,487 Alaskans with 2G by December 31, 2026); *Three Updated Alaska Performance Plans Public Notice* (approving revised performance (continued....))

even where hardware needs to be replaced, we are increasing the support amounts starting January 1, 2025 and expect providers to upgrade to 5G-NR in single-support areas where technically and financially feasible.

132. Some providers have argued that middle mile is limited and that, in some remote places where it is available, the cost per Mbps can be very expensive, and that this limits the speeds they can offer.³³⁹ However, based on information provided by current mobile support recipients in Alaska, by 2026, even in the most remote communities, satellite backhaul will be capable of allowing last-mile providers to offer 5/1 Mbps speeds,³⁴⁰ and satellite providers are continually adding capacity.³⁴¹ In addition, middle-mile infrastructure is expanding with several federal programs spending hundreds of millions to expand middle mile in Alaska.³⁴² Even where middle mile is available but too expensive to offer robust service to customers, the last-mile providers receiving support have five construction seasons from the adoption of this Order and a 30% increase in their annual support to get their communities connected to areas with competitive transport pricing.³⁴³ Due to the ongoing investment by providers

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plans for the three mobile providers with 2G commitment for TelAlaska—technology code 86—covering 1663 Alaskans by December 31, 2026).

³³⁹ Cost of Middle Mile/Internet Access at 1-2 (showing \$700 per Mbps in some remote parts of Alaska, which is the equivalent of paying \$187,500 for a \$7.50 cheeseburger, compared to pricing in the lower 48 states), <https://www.fcc.gov/ecfs/document/1051385828484/2>, attached to Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208 (filed May 13, 2024); see also ARCC May 3, 2024 *Ex Parte*, Attach.

³⁴⁰ See, e.g., *Three Updated Alaska Performance Plans* Public Notice at 1-2, 4, Appx. A (approving Windy City Cellular's commitment of 4G LTE at 5/1 Mbps on Adak Island in the western Aleutian Island chain using LEO satellite backhaul); Alaska Tribal Spectrum, *Alaska Broadband Basics*, <https://aktribalspectrum.org/alaska-broadband-basics/> (last visited Aug. 30, 2024) (noting recent improvements in satellite technology for use of broadband middle mile in Alaska); see also Starlink, *Availability Map*, <https://www.starlink.com/map?view=availability> (showing near universal coverage of Alaska) (last visited Oct. 21, 2024). GCI cost modeled LEO backhaul providing 4/1.6 Mbps per user in five years. Brattle Group, *Alaska 5G Cost Model at 12* (October 15, 2024), attached to GCI Oct. 15, 2024 *Ex Parte*. GCI acknowledges that LEO backhaul should at least be able to allow those speeds in five years, which would allow for the speeds to be adjusted, even to 7/1 Mbps for 5G-NR, depending on what oversubscription ratio it uses. Notably, Starlink currently offers 40-220 Mbps download and 8-25 Mbps upload per user for its priority business offering. See Starlink, *Starlink for Fixed Sites*, <https://www.starlink.com/business/fixed-site> (last visited Oct. 21, 2024).

³⁴¹ See, e.g., SpaceX, *Launches*, <https://www.spacex.com/launches/> (last visited Aug. 30, 2024) (updating Starlink and other satellite deployments).

³⁴² See, e.g., NTIA, *Broadband USA, Funding Programs*, <https://broadbandusa.ntia.gov/funding-programs> (last visited Aug. 30, 2024); Internet for All, *Funding By State/Territory—Alaska*, https://www.internetforall.gov/funding-recipients?state=AK&form_build_id=form-P-MsBulsLZiHSw3DHB0fBPsYEUGX79xo45Mv6MWLxMQ&form_id=ntia_interactive_map_state_and_program_s_election (last visited Aug. 30, 2024); USDA, *Program Overview*, <https://www.usda.gov/reconnect/program-overview>; USDA, *ReConnect Program: Proposed and Approved Projects*, <https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=e2d4c909e06c46d3aa9577bea695a2b9> (last visited Aug. 30, 2024); FEMA, *BRIC*, <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities> (last visited Aug. 30, 2024); Department of the Treasury, *Capital Projects Fund*, *Capital Projects Fund* | U.S. Department of the Treasury (last visited Aug. 30, 2024).

³⁴³ See ARCC May 3, 2024 *Ex Parte* at 2 (observing that the “urban” rate of \$2 per Mbps in transport pricing is available starting from Prudhoe Bay oil fields in the arctic slope). There are three facilities-based transport providers with fiber links running from Prudhoe Bay to Fairbanks, contributing to a competitive transport market on along those routes. See AT&T, *AT&T Alascom System Map* (2019), https://www.corp.att.com/alaska/wp-content/uploads/sites/103/2019/04/map_2019.pdf (last visited Aug. 30, 2024); Letter from John T. Nakahata & Julie A. Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, Attach. at 1 (filed Jul. 24, 2024) (continued....)

using support from the Commission's universal service program and other federal programs, we similarly anticipate that 5G-NR at 35/3 Mbps will be achievable in these areas, where financially and technically feasible by December 31, 2034.³⁴⁴ For these reasons, we set a goal of expanding 5G-NR at 35/3 Mbps, where technically and financially feasible in an outdoor stationary environment by December 31, 2034 in single-support areas.

133. *Duplicate-Support Areas.* While we set a goal of achieving 5G-NR at 35/3 Mbps where technically and financially feasible in single-support areas by December 31, 2034, we set a lower goal of at least 4G LTE at 5/1 Mbps in duplicate-support areas for ACF Mobile Phase I. First, based on the deployment standard in the Alaska Plan,³⁴⁵ 4G LTE is the universal minimum by December 31, 2026, so mobile provider participants should already have deployed—or be well on their way to deploying—4G LTE by that date.³⁴⁶ Second, it would not be reasonable to set an initial goal of 5G-NR in duplicate support areas because providers in these areas may lose support in ACF Mobile Phase II, which would start in January 2030 as discussed in the Further Notice. Third, because of the ACF Mobile Phase II proposed competitive mechanism, providers receiving support in these areas in ACF Mobile Phase I have a competitive incentive to offer service well beyond the minimum in order to position themselves better to win support in the future.³⁴⁷ For these reasons, we do not set a higher speed goal in these areas before ACF Mobile Phase I ends in December 2029.

134. While providers are to work to extend by the end of December 2029 at least 4G LTE at 5/1 Mbps where technically and financially feasible in an outdoor stationary environment to areas where they do not currently offer it, in setting a goal of at least 4G LTE at 5/1 Mbps by December 31, 2029, for duplicate-support areas, we acknowledge that some mobile providers in these areas are likely capable of deploying 5G-NR service in those areas. But we set a goal of 4G LTE at 5/1 Mbps where technically and financially feasible in order to balance the need to address duplicate support in these areas under ACF Mobile Phase II with providers' concerns about support certainty.³⁴⁸ We are also mindful, however, of the need to ensure that Alaskans in these areas have access to the level of advanced communications that other consumers enjoy in the United States. Accordingly, we encourage providers in these areas to commit to 5G-NR for ACF Mobile Phase I and to work toward 5G-NR deployment as soon as possible.

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2024), Attach. at 1; Quintillion, *Knowledge Hub, Maps & Diagrams*, <https://www.quintillionglobal.com/wp-content/uploads/quintillion-satellite-map-final.jpg> (last visited Aug. 30, 2024).

³⁴⁴ Commenters have advocated for a similar goal in their own proposals. See GCI Aug. 8, 2024 *Ex Parte* at 2; see also ATA Comments at 28 (“5G is the future and the Commission is appropriately setting its targets on how to make that a reality for remote Alaskans.”). We also allow for lesser commitments under certain circumstances to help accommodate the unique challenges faced in Alaska. See *infra* Section III.D.3. (Additional Public Interest Obligations); Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328 (Oct. 15, 2024).

³⁴⁵ *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86.

³⁴⁶ See ATA Comments at 28-29 (noting that “LTE and other technologies will need to continue to be supported, even as a transition to 5G is implemented”).

³⁴⁷ Commenters did not specifically address what speed standard should apply in duplicate-support areas. Some argued generally that, in establishing minimum speed standards, the Commission should take into account factors that may affect Alaskan providers' ability achieve minimum targeted speeds, such as the availability of backhaul and the migration cycles in Alaska. ATA Comments at 29; GCI Reply at 4; NTCA Comments at 9-10; see also NTCA Reply at 5 (“Taken together, all of these comments rightly underscore the importance of calibrating obligations for the challenges presented, and then calibrating support to overcome such challenges and meet such obligations initially and on an ongoing basis.”). OptimERA argued that speeds should be set at the national average unless there are extenuating circumstances. OptimERA Reply at 10. For the reasons outlined above, we find that the speed standard we set for duplicate support areas is appropriate for the providers receiving support in these areas.

³⁴⁸ See, e.g., ATA Comments at 22-23, 26; ATA Mar. 15, 2024 *Ex Parte*, Attach. at 1.

As noted above, providers that deploy 5G-NR in their coverage areas before the end of the Alaska Plan will receive credit for having met their 4G LTE commitments at the end of the Alaska Plan (if they also met the speed requirement in their Alaska Plan commitments) and will be better positioned for ACF Mobile Phase II.

135. *Technology Improvements.* During the 10-year course of the Alaska Plan, technological standards of 2G and 3G became dated and obsolete.³⁴⁹ Similarly, during the course of the Alaska Connect Fund, the technology goal may become dated. In the *Alaska Connect Fund Notice*, we sought comment on whether the Alaska Connect Fund should have a mechanism to make a new technology generation—e.g., 6G—the deployment goal, particularly if other high-cost programs begin supporting that generation.³⁵⁰ While commenters did not address this issue, we find it important to retain the ability to adapt the Alaska Connect Fund with changing technology goals. We delegate authority to WTB to raise the technology and performance goals, as appropriate, after opportunity for public notice and comment, during the course of the Alaska Connect Fund.

f. Submission of Alaska Connect Fund Performance Plans

136. To qualify for mobile support under the Alaska Connect Fund, we require existing Alaska Plan providers to submit new performance plans no later than September 1, 2026,³⁵¹ based on BDC standards and availability data as of December 31, 2024,³⁵² as detailed below. The new performance plans will align with BDC standards and will require new commitments to area-based plans by census tract, as discussed below, rather than the generic statewide, population-based plans under the Alaska Plan.

137. *Previous Performance Plans.* Alaska Plan performance plans required that the provider identify in its performance plan: (1) the types of middle mile used on that provider's network; (2) the level of technology (2G, 3G, 4G LTE, etc.) the provider uses to offer service at each type of middle mile; (3) the delineated eligible populations served, at the state level, at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term; and (4) the minimum download and upload speeds at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term.³⁵³ These plans were evaluated by superimposing FCC Form 477 coverage³⁵⁴ over 2010 census blocks with population distributed based on Alaska Population-

³⁴⁹ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 32, para. 66 (nothing that nationwide providers have shut down their respective 3G networks and have shifted toward deployment of 5G-NR throughout the country); *5G Fund Second Report and Order* at 2, paras. 1-2 (establishing a framework for deployment of 5G-NR in areas that lack it).

³⁵⁰ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10030, para. 106.

³⁵¹ WTB may require an earlier submission date if justified by an earlier-than-expected publication of the Eligible-Areas Map.

³⁵² We rely on BDC availability data as of December 31, 2024 (which is filed in the BDC by March 1, 2025) to provide adequate time for WTB, in coordination with OEA, to review said coverage data and determine the areas eligible for support before the commencement of the Alaska Connect Fund for mobile providers on January 1, 2027. In addition, should there be challenges to a provider's BDC data, this will allow testing to occur during the summer of Alaska. Using a later submission, such as June 30, 2025 (which is filed in BDC by September 1, 2025), would necessitate a challenge process occurring in the Alaska winter, which could create unsafe conditions for testers. The performance plans will also integrate information from the Eligible-Areas Map published by WTB for the Alaska Connect Fund.

³⁵³ *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85.

³⁵⁴ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103 (“We will rely on participating carriers’ Form 477 submission in determining whether each carrier’s five-year and 10-year milestones have been met.”).

Distribution Model.³⁵⁵ Because the FCC Form 477 rules allowed mobile providers to file coverage areas based on various technologies and various minimum speeds, based on the provider's own propagation model,³⁵⁶ Alaska Plan providers could submit coverage areas in FCC Form 477 that were consistent with the Alaska Plan requirements (e.g., 4G LTE at 1 Mbps/256 kbps; 4G LTE at 25/10 Mbps).³⁵⁷

138. *Alaska Connect Fund Performance Plans.* We require Alaska Connect Fund performance plans for mobile support to be based on BDC data standards. The Broadband DATA Act requires that the Commission rely on the National Broadband Map “when making any new award of funding with respect to the deployment of broadband internet access service intended for use by residential and mobile customers.”³⁵⁸ The increase in support starting next year does not constitute a new award of funding because it is part of the existing Alaska Plan that provides mobile support through December 31, 2026. However, after that, mobile support for the Alaska Connect Fund begins with new obligations that lead to an expansion or upgrade of mobile broadband coverage. We find that Alaska Connect Fund mobile support, which begins after December 31, 2026, requires that we rely on the National Broadband Map data and the associated BDC data standards in awarding funding for mobile support under the Alaska Connect Fund. Accordingly, we require initial Alaska Connect Fund performance plans to rely on the BDC coverage data and BDC data standards on which the National Broadband map is based and on mobile providers' availability data in Alaska as of December 31, 2024.

139. In the *Alaska Connect Fund Notice*, the Commission acknowledged that the mobile data coverage filings under the BDC have changed substantially from the Commission's previous mobile coverage data requirements. It noted that data for the National Broadband Map are filed pursuant to standardized parameters or standards that mobile broadband providers are subject to in the creation of their coverage data (e.g., specific speeds based on technology, cell edge probability of not less than 90% and cell loading factor of least 50%) and sought comment on the best ways to use the National Broadband Map.³⁵⁹ Commenters generally support the Commission's use of the National Broadband Map for mobile

³⁵⁵ The Alaska Population Distribution Model provided a methodology for estimating the number of Alaskans who receive mobile service within census blocks in remote areas of Alaska. *Alaska Population Distribution Order*, 35 FCC Rcd at 10373-77, paras. 1, 4-6, 9-11.

³⁵⁶ See *Comment Sought on Continued Filing of Alaska Plan FCC Form 477 Mobile Deployment Data; Waiver of Interim PR-USVI Mobile Milestone Filing and Information Provided for Final Milestone Filing*, WC Docket Nos. 16-271, 18-143, 19-195, Public Notice, 38 FCC Rcd 2306, 2306-07, para. 24, n.3 (WTB 2023) (*Alaska Continued Form 477 Public Notice*) (explaining difference in FCC Form 477 coverage data and BDC coverage data).

³⁵⁷ See *Alaska Continued Form 477 Public Notice*, 38 FCC Rcd at 2306-07, para. 4, n.3; see also FCC, *FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022* at 24-25, 31 (Jan. 2, 2023), <https://us-fcc.app.box.com/v/Form477InstThruJune2022>; FCC, *FCC Form 477, Instructions For Filings Through June 30, 2019* at 23-24, 30 (June 19, 2021), <https://us-fcc.app.box.com/v/Form477InstThruJune19>.

³⁵⁸ 47 U.S.C. § 642(c)(2)(B); Broadband DATA Act, Pub. L. No. 116-130, § 802, 134 Stat. 228, 236 (2020), <https://www.congress.gov/116/plaws/publ130/PLAW-116publ130.pdf>. GCI argues that the Commission can use a supplementary collection for BDC, like what was used in the Alaska Plan. See Letter from John Nakahata et al., Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 2-3 (Sept. 12, 2024) (GCI Sept. 12, 2024 *Ex Parte*). Such submissions are not used in the National Broadband Map, however, and if introduced to the map, would not allow for a uniform analysis of the United States as a whole. GCI expresses a concern that “areas with geostationary satellite backhaul cannot support high speed services.” GCI Sept. 12, 2024 *Ex Parte* at 3. Low-earth orbital satellites also show near universal coverage of Alaska now, however. Starlink, Availability Map, <https://www.starlink.com/map?view=availability> (showing near universal coverage of Alaska) (last visited Oct. 21, 2024).

³⁵⁹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10013-15, paras. 66-68 (citing 47 CFR § 1.7004(c)(3)(i), (ii); *BDC Second Report and Order and Third Further Notice*, 35 FCC Rcd at 7479, para. 44); see also *Alaska Continued Form 477 Public Notice*, 38 FCC Rcd at 2306-07, para. 4, n.3; FCC, *FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022* at 24-25, 31 (Jan. 2, 2023), <https://us-fcc.app.box.com/v/Form477InstThruJune2022>.

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coverage data,³⁶⁰ but some noted that the map does not account for cases where a provider has claimed coverage by partly roaming or leasing facilities from another provider.³⁶¹ The Commission's National Broadband Map, however, is based on areas where facilities-based providers offer service. No one commented on the use of the BDC technical coverage standards for Alaska Connect Fund performance plans.

140. We find that basing the Alaska Connect Fund performance plans on BDC standards will result in reduced burdens on providers, given that providers are already required to submit their coverage data to the Commission under the Broadband DATA Act.³⁶² Although the Commission has retired FCC Form 477 reporting requirements for broadband deployment, under the Alaska Plan, mobile provider participants must continue to produce and submit annual deployment data, using the outdated FCC Form 477 requirements, to allow for like comparisons to the previous deployment data on which these providers based their performance commitments.³⁶³ By contrast, under the Alaska Connect Fund, mobile participants will no longer have to produce and submit additional coverage maps because the Commission will use their BDC coverage maps to assess compliance.

141. Unlike FCC Form 477, the BDC requires mobile providers to use standardized parameters in their propagation modeling and data submissions. For example, for 4G LTE, the BDC requires mobile broadband service providers to submit availability data that represent coverage where mobile wireless users should expect to receive minimum user speeds of 5/1 Mbps at the cell edge,³⁶⁴ with a cell edge coverage probability of not less than 90% and a cell loading of not less than 50%.³⁶⁵ All mobile broadband providers must submit biannual BDC filings that depict technology and minimum speeds at 35/3 Mbps 5G-NR, 7/1 Mbps 5G-NR, 5/1 Mbps 4G LTE, and 200/50 kbps 3G at the cell edge.³⁶⁶

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fcc.app.box.com/v/Form477InstThruJune2022; FCC, *FCC Form 477, Instructions For Filings Through June 30, 2019* at 23-24, 30 (June 19, 2021), <https://us-fcc.app.box.com/v/Form477InstThruJune19>.

³⁶⁰ ARCC Comments at 10, 26 (advocating for “Mapping and Broadband data collection (‘BDC’) reporting” as an eligibility requirement as part of its “Alaska Broadband Checklist”); Quintillion Comments at 6; AKPIRG Comments at 1-2 (recognizing the Commission’s mapping has improved, but thinks the map could be improved by focusing on off-road systems in Alaska).

³⁶¹ ATA Comments at 32-33; GCI Reply at 5-6.

³⁶² See 47 CFR § 1.7004(a).

³⁶³ *AK Form 477 Data Special Collection Order*, 38 FCC Rcd at 7401, para. 1 (requiring the eight mobile participants in the Alaska Plan to file mobile wireless coverage data consistent with the FCC Form 477 reporting requirements annually until March 1, 2028).

³⁶⁴ 47 CFR § 1.7004(c)(3)(i) (“For 3G services—a minimum expected user download speed of 200 kbps and user upload speed of 50 kbps at the cell edge; for 4G LTE services—a minimum expected user download speed of 5 Mbps and user upload speed of 1 Mbps at the cell edge; for 5G-NR services—a minimum expected user download speed of 7 Mbps and user upload speed of 1 Mbps, and a minimum expected user download speed of 35 Mbps and user upload speed of 3 Mbps at the cell edge.”).

³⁶⁵ See, e.g., 47 U.S.C. § 642(b)(2)(B)(ii); 47 CFR § 1.7004(c)(3)(ii) (“For each of the mobile broadband technologies, 3G, 4G LTE, and 5G-NR, and for mobile voice services, the provider's coverage maps must reflect coverage areas where users should expect to receive the minimum required download and upload speeds with cell edge coverage probability of not less than 90% and a cell loading of not less than 50%.”); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7479, para. 44 (2020) (*BDC Second Report and Order and Third Further Notice*).

³⁶⁶ FCC, *Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data* at 49-71 (Mar. 30, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec>.

142. Consistent with the BDC requirements, mobile providers who intend to participate in the Alaska Connect Fund must submit new performance plans at the census-tract level, which must: (1) include the name of the census tract that the provider commits to serve;³⁶⁷ (2) include the minimum technology level and speed in an outdoor stationary environment that the provider commits to provide;³⁶⁸ (3) specify the number of hex-9s committed to be covered within each census tract at the committed-to technology and speed levels, which shall be no less than the provider's coverage in the Alaska Plan,³⁶⁹ minus any ineligible areas; and (4) specify how many additional hex-9s committed to within each census tract at the committed-to technology and speed levels are comparable hex-9s.³⁷⁰ Providers are to reflect the additional coverage that is required to retain support due to areas being deemed ineligible solely in the comparable hex-9 category of their performance plans. Initial performance plans must be submitted for WTB approval on or before September 1, 2026. Separate performance plans are required for single-support areas and for duplicate-support areas. For single-support areas, performance plan interim commitments are due December 31, 2031, and performance plan final commitments are due December 31, 2034. While outside of the performance plan, we also expect providers of single-support areas to report on the steps they have taken towards the commitments under their respective performance plans by December 31, 2029. For duplicate-support areas, performance plan commitments are due December 31, 2029. WTB will release a Public Notice providing guidance on what to include in the performance plans and their format.

143. We delegate authority to WTB to adopt requirements and develop data specifications, after appropriate public process, concerning the format and method of uploading Alaska Connect Fund Performance Plans. We also delegate authority to WTB to require additional information, including during WTB's review of any proposed performance plans, from individual Alaska Connect Fund mobile-provider recipients that it deems necessary for determining whether or not they have met their commitments. If ACF Mobile Phase I is extended in duplicate-support areas to December 31, 2034, WTB may require, after seeking notice and comment, the filing of additional commitments in those areas as a final milestone. In addition, WTB may require the filing of revised commitments when justified by developments that occur after the approval of the initial Alaska Connect Fund performance commitments.

144. *Hex-9s per Census Tract.* Each Alaska Connect Fund mobile-provider participant must specify each census tract that it will serve and indicate the minimum number of hex-9s that it will serve within each census tract. In the Alaska Plan, providers committed to cover a specified number of Alaskans on a statewide basis.³⁷¹ This resulted in some communities being deprioritized, as some

³⁶⁷ All census data referenced in this item is based on 2020 Census data, unless otherwise noted. Census tracts have a unique 11 digit code. The first two digits represent the state, the next three the county, and the next six the tract. Census, Understanding Geographic Identifiers (GEOIDs), <https://www.census.gov/programs-surveys/geography/guidance/geo-identifiers.html>. Performance plans should use the 11-digit code and a descriptor with name of the most populated census designated place within the census tract. See Census, Find Address Geographies, <https://geocoding.geo.census.gov/geocoder/geographies/address?form> (providing GEOID information for each entered address).

³⁶⁸ Consistent with BDC requirements, Alaska Connect Fund participants must show that users can receive the minimum technology level and speed with a cell edge probability of not less than 90% and a cell loading of not less than 50%. 47 CFR § 1.7004(c)(3).

³⁶⁹ See *supra* Section III.D.2.e. (Deployment Goals and Commitments).

³⁷⁰ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10030-33, paras. 107-12 (seeking comment on what changes the Commission should make to the performance plan requirements, including, among other things, changes “in light of the BDC specifications and reporting requirements”; whether the Commission should require outdoor stationary or in-vehicle mobile maps for performance plans; and changes to coverage commitments, including whether to use hex-9s). While we received numerous comments supporting individually-tailored performance plans for each provider, no commenter responded to our proposed required elements of performance plans.

providers put their resources in the most desirable remote locations in the state, with some mobile coverage concentrated on the populated areas. In the Alaska Connect Fund, we require commitments to be more granular than statewide commitments to better ensure that communities do not get left behind. For the Alaska Connect Fund, performance plans must specify the number of hex-9s providers commit to cover in each census tract.³⁷² Similar to the Commission's requirement in the Alaska Plan, providers participating in the mobile portion of the Alaska Connect Fund, at a minimum, must maintain the coverage that they had been offering throughout the course of the Alaska Plan based on BDC coverage data as of December 31, 2026.³⁷³

145. Because a provider must maintain its coverage with at least the same level of service in the areas it covered under the Alaska Plan, a provider must commit to cover any eligible hex-9 in its support area and may commit to cover any eligible hex-9 not covered by other mobile providers. We allow a provider the leeway to best employ its knowledge of its areas to ensure that coverage occurs where it will be of most benefit to Alaskans and do not impose further conditions on which hex-9s must be covered. In other words, providers are free to provide mobile service wherever they deem necessary in eligible areas to ensure that people have coverage where they live, work, and travel within each census tract.³⁷⁴

146. We find that using hex-9 areas is the best way to identify areas that mobile-provider participants of the Alaska Connect Fund had previously covered under their Alaska Plan commitments, while giving providers the flexibility to provide mobile coverage where people live, work, and travel under the Alaska Connect Fund.³⁷⁵ The hex-9 approach also best addresses concerns raised in the record about how to develop performance plans for Alaska Connect Fund support.

147. Some commenters expressed concern with an area-based approach and wanted to ensure that any new plan maintained population-based metrics, similar to the Alaska Plan. Specifically, ATA argues that the Alaska Connect Fund should retain a population-based approach with population-based metrics.³⁷⁶ GCI has advocated for covering residential BSLs for mobile-support purposes.³⁷⁷ GCI argues that, while BSLs in the Fabric are insufficiently accurate for wireline support,³⁷⁸ use of BSLs in the Fabric

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³⁷¹ See, e.g., *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9540-41, Appx. (committing to cover 139,357 Alaskans throughout the state in eligible areas of the Alaska Plan).

³⁷² A hex-9 is within a census tract if its centroid is within the boundary of the census tract.

³⁷³ *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 77. We delegate authority to WTB, in coordination with OEA, to compare BDC availability data as of December 31, 2026 with subsequent BDC availability data to ensure that Alaska Connect Fund mobile-provider participants at least maintain the mobile voice and broadband service levels and coverage in all previously served areas. See *supra* section III.D.2.e (Deployment Goals and Commitments).

³⁷⁴ Ineligible areas, including newly ineligible areas, are to be excluded from this requirement.

³⁷⁵ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, 17682, paras. 4-5 (“And millions of Americans live, work, or travel in areas without access to advanced mobile services. . . . The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access—in addition to basic voice service—where they live, work, and travel.”), 53 (“The third performance goal we adopt is to ensure the universal availability of modern networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.”).

³⁷⁶ ATA Comments at 31 (“Finally, as the Commission considers the migration away from Form 477 data in favor of the Broadband Data Collection, it should be wary of any movement away from population-based metrics in favor of location-based metrics. For purposes of the mobile program, population should remain the focus.”).

³⁷⁷ Letter from John T. Nakahata, Julie A. Veach, and Annick M. Banoun, Counsel to GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-328, at 2 (filed May 3, 2024) (GCI May 3, 2024 *Ex Parte*).

³⁷⁸ GCI Reply, WC Docket Nos. 10-90, 16-271, 18-143, 19-126, and 23-328, AU Docket No. 20-34, at 2 (GCI Fabric Reply), *attached to* Letter from Julie A. Veach, counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC (continued....)

is more accurate than reliance on the Alaska Population Distribution Model and should be incorporated into the Model to “potentially better target providers’ service obligation to where Alaska’s remote populations most need the service.”³⁷⁹ The Alaska Population Distribution Model, which WTB developed for purposes of the mobile portion of the Alaska Plan, indicated where people were likely to live, but this was a model and it did not identify actual resident locations.³⁸⁰ We find that the population-based approach in the Alaska Plan can be too limiting to effectively meet the program’s mandate to ensure mobile network coverage is available where Alaskans live, work, and travel.³⁸¹ Though the Commission now has the Fabric, which provides information on where people live and work,³⁸² people frequently travel in and visit areas where there are no Fabric locations, such as along roads, snow mobile routes, hunting areas, bodies of water, or hiking trails.³⁸³ Therefore, we do not limit support to merely targeting where populations live.³⁸⁴ A concentration of BSLs is necessarily evidence that an area is valuable to its users, but the absence of BSLs does not always indicate that an area does not need to be covered by mobile networks, and we will rely on input from all sources, including the providers receiving support, regarding whether Alaska Connect Fund support should be used to cover an area or not. Local mobile providers cover well beyond the areas where people live, including roads, water bodies, and open

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Docket Nos. 10-90, 16-271, 18-143, 19-126 and 23-328, AU Docket No. 20-34 (Apr. 1, 2024), <https://www.fcc.gov/ecfs/document/10401196967586/1>; see also ATA Oct. 15, 2024 *Ex Parte*, Attach A. (“This plan shall identify the number of Broadband Serviceable Locations (‘BSLs’) that the provider can serve at the performance targets we adopt.”).

³⁷⁹ GCI Fabric Reply at 2.

³⁸⁰ *Alaska Population Distribution Model Order*, 35 FCC Rcd at 10374-75, paras. 4-5.

³⁸¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, 17682, paras. 4-5 (“And millions of Americans live, work, or travel in areas without access to advanced mobile services. . . . The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access—in addition to basic voice service—where they live, work, and travel.”), 53 (“The third performance goal we adopt is to ensure the universal availability of modern networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.”).

³⁸² 47 U.S.C. § 642(b)(1). The Fabric is a common dataset of all locations in the United States where fixed broadband Internet access service can be installed. *Id.*; see also FCC, *What is the Location Fabric*, <https://help.bdc.fcc.gov/hc/en-us/articles/5375384069659-What-is-the-Location-Fabric> (last updated Aug. 2, 2023).

³⁸³ Not all locations are BSLs. See FCC, *About the Fabric: What a Broadband Serviceable Location (BSL) Is and Is Not*, <https://help.bdc.fcc.gov/hc/en-us/articles/16842264428059-About-the-Fabric-What-a-Broadband-Serviceable-Location-BSL-Is-and-Is-Not> (last updated Apr. 15, 2024). A BSL is “a business or residential location in the United States at which mass-market fixed broadband Internet access service is, or can be, installed.” *Id.* Residential BSLs include all residential structures, including structures that are (or contain) housing units or group quarters (as those terms are defined by the United States Census Bureau). *Id.* Business BSLs include all non-residential (business, government, non-profit, etc.) structures that are on property without residential locations and that would be expected to demand mass-market, non-enterprise-grade Internet access service. *Id.* Locations that would not likely need mass market fixed broadband Internet access service—such as commercial businesses that would subscribe to enterprise grade broadband or smaller secondary structures, like a shed on a residential property—are recorded in a separate file in the Fabric, but are not BSLs. *Id.* While BSLs are critical to identifying where *fixed* broadband should be deployed, *mobile* connectivity generally could include vaster areas such as roads or hiking trails where there are may not be BSLs but people frequently visit and rely on cell coverage for critical needs, like calling 9-1-1 or using a GPS, for example.

³⁸⁴ In light of the transition to the new area-based framework for the Alaska Connect Fund, to the extent that a provider has specific concerns about certain hex-9s and/or needs to offer comparable coverage for support that it was previously receiving in a newly ineligible area, we delegate authority to WTB to engage in ongoing conversations and site visits as appropriate to work with the provider in identifying where coverage should be expanded in the public interest.

areas that may be used for snow mobiles or hunting.³⁸⁵ Our hex-9 area-based approach can give mobile provider participants the flexibility to continue doing so.

148. This approach differs from the approach adopted in the 5G Fund, given the distinctions between these two funds. In the *5G Fund Second Report and Order*, the Commission required that a hex-9 show locations³⁸⁶ or roads in order to be eligible.³⁸⁷ We do not impose this same requirement in the Alaska Connect Fund, because under the mobile portion of the Alaska Connect Fund for single-support areas and duplicate-support areas under ACF Mobile Phase I, providers will continue to receive support for the areas they have already covered under the Alaska Plan, which was not based on locations in the first instance. In other words, for the Alaska Connect Fund, we do not want to make a previously supported area ineligible simply because of the absence of a location or road—that would be inconsistent with our approach of extending support for the areas that mobile-provider participants covered under the Alaska Plan (subject to the ineligibility criteria discussed above). By contrast, it is reasonable for the 5G Fund to require hex-9s to have locations or roads because it is a reverse auction that will distribute *new* support to areas unserved by unsubsidized 5G service. In creating a different requirement for Alaska Connect Fund than the 5G Fund, we also note that Alaska is unique from the rest of the United States, in that areas that Alaskans live, work, and travel are not as clearly determined by locations or roads. First, many areas in Alaska are accessible only by plane rather than roads, and second, covering certain bodies of water is important to meet the “work and travel” aspect of our universal service goals for Alaskans. In addition, in the context of developing a sampling methodology for speed testing for the Alaska Plan, road data was found to be unreliable in certain areas. We will not constrain Alaska Connect Fund recipients to area eligibility rules that were not developed with Alaska and the Alaska Plan in mind. This approach will allow providers, who have local knowledge about the communities they serve, to continue to invest in network improvements via their performance plans where they know they are needed most. While we do not require hex-9s to include BSLs or roads, we strongly encourage providers to consider that data in determining their coverage, particularly to the extent they cover areas beyond those that they covered in the Alaska Plan.³⁸⁸

149. *Middle-Mile Disaggregation.* Alaska Plan providers were required to disaggregate their commitments by available middle mile in their performance plans.³⁸⁹ We decline to adopt a middle-mile disaggregation requirement for Alaska Connect Fund performance plans. Accordingly, Alaska Connect Fund mobile support recipients will not need to include information about which middle mile applies to which coverage in their performance plans.³⁹⁰ While the initial Alaska Plan requirement for middle-mile disaggregation was necessary due to a dearth of information regarding the microwave and fiber infrastructure in Alaska in 2016, since then, the Commission has been receiving microwave and fiber

³⁸⁵ See, e.g., *GCI Waiver Request Order*, 37 FCC Rcd at 10176, para. 8 (explaining how providers need to receive a waiver to use UA to speed test over bodies of water and areas with no passable and rugged terrain).

³⁸⁶ The Fabric is a dataset of every location (building or structure) in the United States and its Territories identified as a single point or record defined by a set of geographic coordinates that fall within the footprint of a structure, with each point assigned a unique Commission-issued Location ID. See FCC, *About the Fabric: What a Broadband Serviceable Location (BSL) Is and Is Not*, <https://help.bdc.fcc.gov/hc/en-us/articles/16842264428059-About-the-Fabric-What-a-Broadband-Serviceable-Location-BSL-Is-and-Is-Not> (last updated Apr. 15, 2024). Within the location records included in the Fabric are a subset of business, residential, or mixed use locations at which mass-market fixed broadband internet access service are or could be installed, referred to as Broadband Serviceable Locations (BSLs). *Id.* “Locations” for the purposes of the Fabric is thus more expansive than just BSLs.

³⁸⁷ *5G Fund Second Report and Order* at 25-26, paras. 44-46.

³⁸⁸ See *supra* Section III.D.2.d.iv. (Comparable Service Areas).

³⁸⁹ *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85.

³⁹⁰ *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85 (requiring performance plans to include “the types of middle mile used on that carrier’s network”).

infrastructure information from providers.³⁹¹ Moreover, mobile providers must indicate on their Alaska Connect Fund performance plans on a census-tract-by-census-tract basis, where they believe transport is inadequate.³⁹² We no longer believe that technology conditions need to be broken out by the middle-mile infrastructure available to better understand the limitation of any speed commitments in the manner they were in the Alaska Plan performance plans—and we will continue to have access to necessary middle-mile information through the middle-mile maps that providers submit as part of their obligations under the Alaska Connect Fund.³⁹³

g. Appropriate Use of Support

150. Consistent with the approach in the Alaska Plan, Alaska Connect Fund mobile-support recipients will be permitted to use their support for both operating expenses and capital expenses for deploying, upgrading, and maintaining mobile voice and broadband-capable networks, including middle-mile improvements needed to meet those ends.³⁹⁴ As long as an Alaska Connect Fund recipient is providing service to its awarded area consistent with the public interest obligations delineated in this Order, service expenditures in that area will be eligible for support.³⁹⁵ Expenditures for middle-mile facilities may occur outside of eligible areas, so long as they are necessary to provide mobile voice and broadband service in the areas where the Alaska Connect Fund recipient receives support.

151. In the *Alaska Connect Fund Notice*, we pointed to the Commission’s rule setting forth the appropriate use of support under the Alaska Plan³⁹⁶ and sought comment generally on whether to follow the same approach, particularly in the context of how to use—and allocate—support for middle mile (e.g., whether to allow use of Alaska Connect Fund support for middle-mile improvements like in the Alaska Plan, or to set aside specific funds for middle mile).³⁹⁷ While some commenters asked us to set aside specific funds for middle mile,³⁹⁸ no commenters asked us to reallocate existing Alaska Plan support already going to mobile provider participants for middle mile only. In fact, ATA specifically made clear that any allocation of funds to middle mile should “provide additional support, over and above current support amounts.”³⁹⁹ No commenters asked us to change the requirements for appropriate use of support for the Alaska Connect Fund, and in fact, ATA and other commenters in general asked the Commission to embrace the “basic structure” of the Alaska Plan with only minor changes.⁴⁰⁰ We find that adopting

³⁹¹ *Alaska Plan Order*, 31 FCC Rcd at 10158, 10172-73, paras. 60, 102.

³⁹² See *infra* Section III.D.3. (Additional Public Interest Obligations).

³⁹³ See *infra* Section III.D.4. (Accountability and Oversight).

³⁹⁴ Appropriate use of support for middle-mile improvements includes the use of support to build or upgrade middle mile that lays outside a participating competitive ETC’s service area but that is necessary for service in that carrier’s service area. See *Alaska Plan Order*, 31 FCC Rcd at 10165, para. 81 (“Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of mobile voice and broadband-capable networks, including middle-mile improvements needed to those ends.”); see also 47 CFR 54.317(e).

³⁹⁵ See *Alaska Plan Order*, 31 FCC Rcd at 10165, para. 81 & n.167. The Commission will reduce frozen support amounts for any provider in the event it is determined that the provider received amounts in the past to which it was not entitled. *Id.*

³⁹⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10021, para. 83, n.268 (citing 47 CFR 54.317(e)).

³⁹⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10021-22, paras. 83-84.

³⁹⁸ See, e.g., ARCC Reply at 17-18. We address ARCC’s petition for a specific middle-mile support plan below. See *infra* Section IV. (AMMES Petition).

³⁹⁹ ATA Reply at 17.

⁴⁰⁰ See, e.g., ATA Comments at 22 (“The Commission can build upon the success of the Alaska Plan by embracing its basic structure and making targeted updates to evolve it into the ACF.”).

requirements for appropriate use of support that mirror those from the Alaska Plan will help ensure that mobile provider participants have the flexibility they need to best serve remote Alaskans with high-cost support.

3. Additional Public Interest Obligations

152. *Reasonably Comparable Services and Rates.* Section 254(b)(3) provides the universal service principle that consumers in all regions of the nation, including “rural, insular, and high-cost areas,” should have access to advanced communications that are reasonably comparable to those services and rates available in urban areas.⁴⁰¹ Similar to the requirement under the Alaska Plan,⁴⁰² under the Alaska Connect Fund, we require participating mobile providers to certify their compliance with this obligation in their annual compliance filings and to demonstrate compliance with this obligation on December 31, 2029 for duplicate-support areas, and on December 31, 2029, December 31, 2031, and December 31, 2034 for single-support areas.⁴⁰³

153. In the *Alaska Connect Fund Notice*, we sought comment on the best means for advancing the statutory requirement that rural areas have services and rates that are “reasonably comparable” to those available in urban areas, including how support recipients should demonstrate their compliance with this requirement.⁴⁰⁴ In its comments, NTCA recognizes the importance in ensuring that Alaska consumers living in rural areas “can realize the benefits of ‘reasonably comparable’ services at ‘reasonably comparable’ rates to those available in urban areas.”⁴⁰⁵ ARIC says that “[d]eveloping a program that deploys the same broadband and mobile wireless speeds and pricing urban residents in Anchorage and other major cities in America are receiving is critical.”⁴⁰⁶ APT urges the Commission to be flexible in the timing required to provide reasonably comparable service and rates due to the many challenges to providing service in Alaska.⁴⁰⁷ AMMA says the Commission should consider “reasonably comparable rates within the ACF that are sensible considering the middle-mile technology available to a very remote community or location.”⁴⁰⁸ As ATA notes in its comments, it is important for the Commission to take stock on what has already worked in the Alaska Plan, including the obligation that providers offer reasonably comparable rates.⁴⁰⁹

154. To ensure that providers are adequately notifying the public of their reasonably comparable plans, we require that a provider demonstrate compliance by showing that it publishes, on its publicly accessible website, at least one mobile broadband plan and at least one stand-alone voice plan

⁴⁰¹ 47 U.S.C. § 254(b)(3); *see also Alaska Connect Fund Notice*, 38 FCC Rcd at 10033-34, para. 114.

⁴⁰² 47 CFR § 54.308(d); *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 78.

⁴⁰³ We note that the reasonably comparable rate requirement is not directly tied to the providers’ deployment, but instead is an important public interest obligation to ensure providers are offering affordable service plans to Alaskans in the areas for which the providers receive support. Demonstration of their compliance with the reasonable rate requirement at these dates allows accountability for this important public interest obligation. Although providers do not have a performance plan milestone on December 31, 2029 for single-support areas, for example, we require them to make a demonstration of their reasonably comparable rate compliance based on the service they offer at that time (in line with their requirement to file a progress report). We delegate authority to WTB to require additional showings of compliance with the reasonably comparable rate requirement in duplicate-support areas after December 31, 2029, if WTB extends support for ACF Phase I beyond that date.

⁴⁰⁴ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10033-34, para. 114.

⁴⁰⁵ NTCA Reply at 3.

⁴⁰⁶ ARIC Comments at 11.

⁴⁰⁷ APT Comments at 16.

⁴⁰⁸ AMMA Comments at 6.

⁴⁰⁹ ATA Reply at 7-8.

that are: (1) substantially similar to a service plan offered by at least one different mobile wireless service provider in the Cellular Market Area (CMA) for Anchorage, Alaska, and (2) offered for the same or a lower rate than the matching plan in the CMA for Anchorage.⁴¹⁰ This demonstration must include usage allowances for the comparable plans in Anchorage. Because of the unique conditions in remote Alaska, however, and the variety of circumstances and costs of the affected carriers, we authorize WTB to employ alternative benchmarks or dates appropriate for specific competitive ETCs in assessing carrier offerings. Participants in the Alaska Connect Fund may not cite their own plans in Anchorage as evidence of meeting the reasonably comparable rate condition.

155. *Additional Obligations for Performance Plans with Less than the Minimum Deployment Goals.* In the *Alaska Plan Order*, mobile-provider participants had additional reporting obligations when their performance plans indicated that they had backhaul limitations, especially where it affected their performance commitments.⁴¹¹ An FCC Form 481⁴¹² reporting requirement was added to the Alaska Plan for mobile-provider participants that identified in their adopted performance plans that they relied exclusively on performance-limiting satellite backhaul for a certain portion of the population in their service area. These providers were required to certify whether any terrestrial backhaul, or any new-generation satellite backhaul service providing middle-mile service with technical characteristics comparable to at least microwave backhaul, became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul.⁴¹³ If a mobile-provider participant certified that such new backhaul has become available, it had to provide a description of the backhaul technology, the date on which that backhaul was made commercially available to the carrier, and the number of the population served by the new backhaul option.⁴¹⁴ Further, the Commission required those Alaska Plan providers that had not already committed to providing 4G LTE at 10/1 Mbps speeds to the population served by the newly available backhaul by the end of the plan term to submit revised performance commitments factoring in the availability of the new backhaul option no later than the due date of the FCC Form 481 in which they have certified that such backhaul became commercially available.⁴¹⁵

156. In the *Alaska Connect Fund Notice*, we asked whether providers should be permitted to offer lesser commitments if they are constrained by middle mile, and if so, what information should be required to demonstrate that an area is middle-mile constrained.⁴¹⁶ We sought comment on whether we should impose requirements similar to the additional requirements imposed in the *2016 Alaska Plan Order* for providers that commit to less than 10/1 Mbps 4G LTE (e.g., submitting an updated performance plan when new middle mile becomes available).⁴¹⁷ We also sought comment on the best approach for

⁴¹⁰ *Tribal Mobility Fund Phase I Auction Rescheduled For December 19, 2013, Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, 28 FCC Rcd 11628, 11682-85, paras. 193-98 (WCB/WTB 2013) (*Tribal Mobility Fund Phase I Procedures Public Notice*); *Mobility Fund Phase I Auction Scheduled For September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, 27 FCC Rcd 4725, 4774-75, paras. 179-80 (WTB 2012) (*Mobility Fund Phase I Procedures PN*).

⁴¹¹ *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

⁴¹² FCC Form 481 is used for annual reporting requirements for high-cost recipients. See 47 CFR § 54.313.

⁴¹³ *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

⁴¹⁴ *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

⁴¹⁵ 47 CFR § 54.313(l); *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

⁴¹⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10032, para. 111.

⁴¹⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10032, para. 111 (citing *Alaska Plan Order*, 31 FCC Rcd at 10172-73, para. 102); see also 47 CFR § 54.313(l)(1)(iv). We also sought comment on whether, “[i]f a provider commits to less than 35/3 Mbps,” we should “require the mobile provider to identify all such areas, based on the chosen base geographical unit, where it is not committing to 35/3 Mbps, so if new middle mile becomes commercially available (continued....)

determining whether the availability of new middle-mile service should result in changes to Alaska Connect Fund mobile providers' performance plans and on whether we could conclude that middle mile is not commercially available if the Alaska Connect Fund participant must pay a particular price per Mbps.⁴¹⁸ We asked whether providers that are providing fixed services at speeds above their mobile-service commitments should be deemed to have sufficient middle mile available to it.⁴¹⁹ Only AMMA, which represents two satellite providers,⁴²⁰ addresses these questions directly. AMMA supports requiring updated performance plans when new middle-mile services enter the market.⁴²¹ AMMA further argues that "the Commission should not consider a new middle-mile service to be 'not commercially available' if the ACF participant must pay a 'particular price per Mbps'" and argues that "if the wireline affiliate is meeting its commitments in an area the mobile provider should be able to do the same."⁴²²

157. Given Alaska's unique geography and climate, we find that the public interest would be served by permitting Alaska Connect Fund applicants, under certain circumstances, to request in their proposed performance plan submissions approval of lesser commitments than the minimum deployment and progress goals specified herein for the Alaska Connect Fund. Specifically, we delegate authority to WTB to approve requests on a case-by-case basis where the requestor cannot meet the minimum deployment and progress goals at the Alaska Connect Fund support levels.⁴²³ Through this process, WTB can negotiate individualized performance plans with each provider. We require that the provider specify the deployment commitment it can meet and explicitly state the reason it cannot commit to the minimum deployment or progress goal as a notation under the proposed performance plan for each census tract. Providers may submit supplementary information to aid in this process. As part of these negotiations, WTB can consider all relevant and practical circumstances,⁴²⁴ among other considerations,⁴²⁵ including middle-mile mapping data and wireline affiliate commitments in the relevant area to help assess a provider's proposed commitment in single-support areas at the Alaska Connect Fund support levels.⁴²⁶ Where a hex-9 is more than 50 miles⁴²⁷ from a microwave or fiber node,⁴²⁸ this factor alone weighs

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to those areas, it will trigger a new performance plan filing." *Alaska Connect Fund Notice*, 38 FCC Rcd at 10032, para. 111.

⁴¹⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10023, para. 87.

⁴¹⁹ *Alaska Connect Fund Notice*, 38 FCC Rcd 10023, para. 87.

⁴²⁰ AMMA Comments at 1, 9.

⁴²¹ AMMA Comments at 8.

⁴²² AMMA Comments at 8. While not directly addressing whether transport is commercially available or not, ARCC, which represents five of the eight mobile providers of the Alaska Plan, has petitioned for additional support where transport costs exceed \$75 per Mbps. ARCC Petition at 7, 18; *see infra* Section IV. (Alaska Middle Mile Expense Support Petition).

⁴²³ If WTB extends ACF Mobile Phase I beyond December 31, 2029, and requires new commitments, this section would apply to those commitments as well.

⁴²⁴ *See* ATA Oct. 15, 2024 *Ex Parte*, Attach. A.

⁴²⁵ *See, e.g.,* FCC Supply Chain Reimbursement Program Study (2021) (providing a catalog of component costs for the Rip and Replace program), *attached to Wireline Competition Bureau Seeks Comment on a Report and Preliminary Cost Catalog and Replacement List to Help Providers Participate in the Supply Chain Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 21-355 (Mar. 25, 2021), <https://docs.fcc.gov/public/attachments/DA-21-355A1.pdf>.

⁴²⁶ *See, e.g.,* *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx. (adopting performance plans, which had clarifying notes).

⁴²⁷ An analysis of the Alaska fiber and microwave data indicate that, under some conditions, microwave towers are over 80 miles apart. *See Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order on Reconsideration, (continued....)

heavily in favor of allowing a lesser commitment.⁴²⁹ Given the obsolete technological standards with 3G or less⁴³⁰ and the goal of the Alaska Plan to achieve universal 4G LTE at 10/1 Mbps,⁴³¹ WTB is to have a strong presumption against approving commitments less than 4G LTE at speeds of at least 5/1 Mbps in an outdoor stationary environment for any milestone.

158. Where WTB approves lesser commitments in a provider's performance plan, we require additional reporting obligations for FCC Form 481. We require the mobile provider to certify, by census tract, that the basis for which it qualified for lesser commitments still applies in the previous calendar year and to describe on its FCC Form 481 the efforts it has taken to improve conditions that served as the basis for the lesser commitments. When the basis for the lesser commitments has changed in the previous calendar year, allowing the minimum commitments to be achieved in the census tract, the mobile provider must certify to this in FCC Form 481.

159. Where a provider certifies on FCC Form 481 that conditions have changed such that it no longer qualifies for lesser commitments in a census tract, the provider must submit additional information and updated performance plans into the Alaska Connect Fund docket.⁴³² Where conditions have changed, the mobile provider must submit, for the affected census tracts: (i) a description of the change; (ii) the

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33 FCC Rcd 2068, 2085-87 (WCB/WTB 2018) (setting forth requirements for Alaska Plan participants to submit fiber and microwave network information) (*Alaska Network-Mapping Order*).

⁴²⁸ ATA Oct. 15, 2024 *Ex Parte*, Attach. A (proposing model language that states, *inter alia*, "we direct the Bureaus to consider all relevant and practical circumstances, including the extent to which suitable middle mile facilities that are affordable to all carriers may not be available . . ."); *see also Alaska Network-Mapping Order*, 33 FCC Rcd at 2085-87 (defining "nodes" for fiber and microwave network submissions for Alaska Plan providers).

⁴²⁹ As some information may be based on confidential submissions as part of the Alaska Plan fiber and microwave network maps, we direct WTB to share with individual providers on a case-by-case basis hex-9s that are more than 50 miles from a microwave or fiber node. WTB may provide a map or list of hex-9s based on the inquiring provider's nonpublic information. A hex-9 is beyond 50 miles if the centroid of the hex-9 is beyond 50 miles from the microwave or fiber node. GCI states: "Areas without fiber backhaul, however, cannot support high-speed service with generous usage allowances, and certainly could not support 5G at 35/3 Mbps. Areas with microwave backhaul have lower speeds with capacity limitations." GCI Sept. 24, 2024 *Ex Parte* at 3. However, while microwave may have less capacity than fiber, that does not mean microwave is universally incapable of providing backhaul for 5G-NR at 35/3 Mbps. *See* GCI Sept. 24, 2024 *Ex Parte* at 3; *see also* GCI Oct. 23, 2024 *Ex Parte* at 2; GCI Sept. 12, 2024 *Ex Parte* at 1. The Commission has been collecting detailed fiber and microwave network information, including capacity for each fiber and microwave link of the Alaska Plan providers. *See Alaska Network-Mapping Order*, 33 FCC Rcd at 2085-87. Consequently, the Commission can see the amount of backhaul capacity available to a local population by the Alaska Plan providers. Moreover, areas with limited capacity microwave could theoretically be supplemented with LEO backhaul to the extent that the microwave links cannot otherwise be upgraded. GCI also states, "For example, achieving the higher throughput speeds expected for 5G service results in a smaller coverage area than the lower throughput speeds for 4G, meaning that a provider may need to construct more towers to provide 5G service to the number of population reflected in its existing Alaska Plan commitments . . ." GCI Sept. 12, 2024 *Ex Parte* at 1. We agree that higher throughput speeds may shrink coverage area depending on whether the coverage for the uplink or the downlink is the limiting factor, but this may similarly lead to comparable or an expansion of coverage where a provider, for example, previously reported 4G LTE at 10/1 Mbps and then later provided coverage data for that same area at the lesser downlink speed of 5G-NR at 7/1 Mbps. We note that this could factor into the determination of whether the ultimate goal is technically and financially feasible.

⁴³⁰ *See Alaska Connect Fund Notice*, 38 FCC Rcd at 10013-14, para. 66.

⁴³¹ *See Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

⁴³² WC Docket No. 23-328. For example, if transport options to the affected portion of the census tract change, the Alaska Connect Fund mobile provider must submit such information into the docket via the FCC Electronic Comment Filing System, Submit a Standard Filing, <https://www.fcc.gov/ecfs/filings/standard>.

date on which the change occurred; (iii) the hex-9s within the census tract that could be served as a result of the changed conditions; and (iv) revised performance commitments factoring in the change. These filings must be made simultaneously with the submission of the FCC Form 481. The mobile provider may seek confidential treatment of information required in this section if the conditions for confidentiality are met.⁴³³

4. Accountability and Oversight

160. *Compliance and recordkeeping.* Consistent with our long-standing approach for the high-cost program, we will hold Alaska Connect Fund mobile support recipients accountable for meeting their obligations under the program. The high-cost program has various rules to protect the success and integrity of high-cost support.⁴³⁴ Alaska Connect Fund mobile support recipients shall be subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in section 54.320. If specific performance obligations are not achieved in the time period identified in the approved performance plans the provider shall be subject to the penalties set forth in section 54.320(c) and (d).

161. In the *Alaska Plan Order*, providers faced a reduction in support if they did not meet their milestone obligations or other public interest obligations.⁴³⁵ Alaska Plan mobile-provider participants had interim performance plan milestones due on December 31, 2021, and have final performance plan milestones due on December 31, 2026. To evaluate whether the provider was meeting its performance milestones, the Commission took the provider's FCC Form 477 or special collection coverage data⁴³⁶ and intersected it with Alaska Population Distribution Model data.⁴³⁷ The amount of support that is withheld is based on the percentage of compliance gap that the provider has with its performance commitments.⁴³⁸ Alaska Plan mobile-provider participants that do not meet other public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to section 54.8 of the Commission's rules.

162. We have generally adopted build-out milestones for the Alaska Connect Fund mobile competitive ETCs that will be more specifically defined based on each participant's approved performance plan, with interim milestone obligations that must be met by December 31, 2031, and final milestone obligations that must be met by December 31, 2034, for single-support areas and with final milestone obligations that must be met by December 31, 2029, for duplicate-support areas under ACF Mobile Phase I, unless otherwise modified by WTB. Once a carrier's performance plan is approved by the WTB, the carrier is required to meet the performance benchmarks of the plan. No commenters suggest eliminating the reduction of support framework, and in fact, some commenters suggest that the FCC should adopt even stricter measures to address failure to meet commitments.⁴³⁹ We agree with these

⁴³³ See 47 CFR §§ 0.457, 0.459.

⁴³⁴ 47 CFR part 54.

⁴³⁵ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 104 (citing 47 CFR § 54.320(d)).

⁴³⁶ Staff analyze Alaska Plan provider coverage by analyzing FCC Form 477 Mobile Broadband Deployment filings and Alaska Special Collection filings, intersected with the Alaska Population Distribution Model. See *Alaska Population Distribution Model Order*, 35 FCC Rcd at 10376, para. 9. WTB and OEA required the eight mobile participants in the Alaska Plan to file mobile wireless coverage data consistent with the FCC Form 477 reporting requirements annually until March 1, 2028. *AK Form 477 Data Special Collection Order*, 38 FCC Rcd at 7401, para. 1.

⁴³⁷ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103; *Alaska Population Distribution Model Order*, 35 FCC Rcd at 10376, para. 9; *AK Form 477 Data Special Collection Order*, 38 FCC Rcd at 7401, para. 1.

⁴³⁸ 47 CFR § 54.320(d).

⁴³⁹ See AKPIRG & Native Movement Comments at 4 ("We believe that providers that did not meet their public interest obligations – that did not serve the people they promised to serve – should either be subject to increased (continued....)

commenters that accountability and oversight are important elements of ensuring that the Alaska Connect Fund is successful and that providers are appropriately penalized in instances of noncompliance with their obligations. Accordingly, consistent with the Alaska Plan and the Commission's other high-cost programs, Alaska Connect Fund recipients of support that fail to meet these milestones will be subject to the same potential reductions in support as any other carrier subject to defined obligations.⁴⁴⁰

163. In addition, as the mobile portion of the Alaska Connect Fund, provided after December 31, 2026, is a new award of funding for deployment, we ensure that our accountability measures are also consistent with the BDC data. We delegate authority to WTB to create any systems for data specifications and collections they deem necessary for Alaska Connect Fund administration to determine whether providers have met their commitments.

164. *Annual BDC Infrastructure Submission.* We require Alaska Connect Fund recipients of mobile support to annually submit infrastructure data to verify their coverage in areas for which they receive support.⁴⁴¹ In the *Alaska Connect Fund Notice*, the Commission sought comment on whether it should require submission of infrastructure data similar to the BDC mobile verification process to substantiate coverage and demonstrate compliance with ACF commitments.⁴⁴² While commenters did not respond to that specific request for comment, several commenters support Commission efforts to require recipients to demonstrate they have met their performance requirements and agree that oversight will be important for a future Alaska Connect Fund.⁴⁴³

165. Based on FCC staff's experience in implementing the mobile BDC processes, we find that the collection of infrastructure data is an important tool that the Commission can use to ensure compliance with the Alaska Connect Fund requirements.⁴⁴⁴ Accordingly, we require Alaska Connect Fund recipients of mobile support to submit, on an annual basis, all of the infrastructure data that providers would submit as part of the BDC mobile verification process, for all infrastructure used to serve an Alaska Connect Fund mobile support recipient's supported area for coverage as of December 31 of each year,⁴⁴⁵ due by March 1 of the following year.⁴⁴⁶ These Alaska Connect Fund recipients of mobile

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compliance requirements, or should be precluded from the ACF entirely"); OptimEra Reply at 4-5, 10-11 (proposing a framework that imposes "strict penalties" for providers that fail to comply with service requirements, including forfeiture of their service area and the wireless assets associated with the service, and suggesting that the FCC has been "too lenient with rural operators in Alaska."). While we agree with these commenters that penalties are necessary to address providers that do not meet their performance obligations, we are not persuaded that Alaska Connect Fund providers should be penalized differently from any other high-cost support recipient. As such, we maintain that reduction in support remains the most appropriate response, and impose the same penalties as those adopted in the Alaska Plan and other FCC programs.

⁴⁴⁰ See, e.g., 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54. Each hex-9 in the Alaska Connect Fund recipient's performance plan shall be considered a "location" for purposes of section 54.320(d).

⁴⁴¹ Alaska Connect Fund mobile providers will use the same infrastructure data specifications as are required for submitting this data pursuant to BDC procedures. FCC, *Broadband Data Collection Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes* §§ 1.1-1.9 (Feb. 20, 2024), <https://us-fcc.app.box.com/v/bdc-infrastructure-spec>.

⁴⁴² *Alaska Connect Fund Notice*, 38 FCC Rcd at 10036-37, paras. 121, 124.

⁴⁴³ AKPIRG Comments at 4; Letter from Jeffrey H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208, at 1-2 (filed Apr. 15, 2024) (ARCC April 15, 2024 *Ex Parte*).

⁴⁴⁴ See *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3008, para. 2.

⁴⁴⁵ The first infrastructure filing would be based on December 31, 2027 BDC availability data.

support must submit these data to WTB by the following March 1 based on their instructions.⁴⁴⁷ Similar to BDC mobile verifications, staff can use the infrastructure data to estimate a “core coverage area,” in which coverage at the modeled throughput is highly likely to exist at or above the minimum values reported in the provider’s submitted coverage data.⁴⁴⁸ This “core coverage area” may be considered to meet the mobile support recipient’s Alaska Connect Fund build-out obligations. For any areas that are outside of the “core coverage area” but within the required coverage area, WTB will consider additional information submitted by the Alaska Connect Fund mobile support recipient, such as on-the-ground or UA speed test data, and may request such information from the recipient.⁴⁴⁹

166. To facilitate the process of Commission staff review of an Alaska Connect Fund mobile support recipient’s data, we delegate authority to WTB to notify the support recipient of any additional requests for information. For the purposes of accountability of high-cost funds, we require an annual mobile infrastructure submission. As the initial map can be used and built upon for subsequent submissions, requesting this initial submission early into the plan is appropriate. Moreover, the construction of this data set can be used for other BDC verification requests, allowing for an additional benefit to the provider if required early in this process.

167. *Speed Tests.* We require certifications that the provider has met its milestone commitments to be accompanied by speed tests for those mobile provider recipients receiving more than \$5 million annually. In the *Alaska Plan Order*, certain providers of mobile support were required to conduct drive tests to accompany their certifications that they have met their milestone obligations. Specifically, for Alaska Plan participants receiving more than \$5 million annually in support, the Commission required that the certification that the provider met its obligations was to be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier’s network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.⁴⁵⁰ These tests allowed providers to demonstrate coverage of an area with a statistically significant number of tests.⁴⁵¹ As part of this process, WTB and OEA published a speed test methodology to ensure that any speed tests amounted to statistically significant sampling of the provider’s coverage and service obligations.⁴⁵²

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⁴⁴⁶ See 47 CFR § 1.7006(c)(2); FCC, *Broadband Data Collection Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes* §§ 1.1-1.9 (Feb. 20, 2024), <https://us-fcc.app.box.com/v/bdc-infrastructure-spec>.

⁴⁴⁷ See 47 CFR § 1.7006(c)(2); FCC, *Broadband Data Collection Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes* §§ 1.1-1.9 (Feb. 20, 2024), <https://us-fcc.app.box.com/v/bdc-infrastructure-spec>; see also FCC, *Broadband Data Collection, BDC System User Guide* at 242-44 (Jun. 30, 2024), <https://us-fcc.app.box.com/v/bdc-filer-user-guide>.

⁴⁴⁸ *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3064, para. 104.

⁴⁴⁹ See *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3064, para. 104.

⁴⁵⁰ 47 CFR § 54.321; *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

⁴⁵¹ See *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103; see also *Alaska Plan Drive Test Order* at 5883, 5885-87, 5924, paras. 1, 7-9, Appx B.

⁴⁵² See *Alaska Plan Drive Test Order*, 37 FCC Rcd at 5924, Appx. B (Drive-Test Procedures for Alaska Drive-Test Model—Technical Appendix).

168. In the context of the BDC, the Commission adopted procedures whereby providers may submit on-the-ground test data as part of the BDC verification process.⁴⁵³ When submitting on-the-ground test data, a provider is required to submit evidence of network performance based on a sample of on-the-ground tests that is statistically appropriate for the area tested for a sampled area using the H3 geospatial indexing system at resolution 8 (hex-8).⁴⁵⁴ The sampled area is provided to the provider for testing within the provider's coverage area, and hexagons that are not accessible by roads are excluded from all strata within each stratum for the service providers must conduct on-the-ground testing.⁴⁵⁵

169. In the *Alaska Connect Fund Notice*, the Commission sought comment on whether it should require on-the-ground test data for supported areas based on a sample that is statistically appropriate.⁴⁵⁶ The Commission noted that, under the BDC mobile verification process, if a provider chooses to submit on-the-ground test data in response to a verification request, "it must provide such data based on a sample of on-the-ground tests that is statistically appropriate for the area tested," and that, "[i]n the BDC, the sampled area is based on H3 resolution-8 hexagonal areas, and the provider must submit the results of at least two tests within each hexagon, and the time of the tests must be at least four hours apart, irrespective of date."⁴⁵⁷ The Commission asked whether it should apply this mobile verification process to the Alaska Connect Fund.⁴⁵⁸ Commenters express support for requiring speed testing to help verify that providers have met their requirements under the Alaska Connect Fund.⁴⁵⁹ The Alaska Public Interest Research Group and Native Movement supports a requirement for USAC to conduct speed testing and argues that providers receiving more than \$5 million annually should cover the costs of USAC-administered testing.⁴⁶⁰

170. After considering the record and our previous experience administering the Alaska Plan, we find that it will serve the public interest to require Alaska Connect Fund mobile providers receiving more than \$5 million per year to submit speed test data generally conforming to the BDC Data Specifications for Mobile Speed Test Data⁴⁶¹ when they submit their milestone certifications. While we will require annual submission of infrastructure data for all mobile providers receiving support under the Alaska Connect Fund, we find that it is important to require additional speed test results for those mobile providers receiving the most from the program. The combination of infrastructure data and speed test data that these providers will submit will allow for the theoretical engineering model to be verified with empirical data, improving the reliability of both as a means of understanding the realities on the ground.

171. While we generally rely on BDC Data Specifications for Mobile Speed Test Data requirements, we expand the "accessible" hexes that are included in sampling for purposes of the Alaska Connect Fund. Generally, in the BDC, hexagons that are not accessible by roads are excluded from all

⁴⁵³ 47 U.S.C. § 642(a)(1)(B). For this process, mobile service providers must submit either infrastructure information or on-the-ground test data in response to a request by Commission staff as part of its inquiry to independently verify the accuracy of the mobile provider's coverage propagation models and maps.

⁴⁵⁴ 47 CFR § 1.7006(c).

⁴⁵⁵ *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3059, para. 94. For the purposes of the Alaska Connect Fund, UA testing may be permissible in circumstances where it is not be permissible for BDC purposes.

⁴⁵⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10037, paras. 122-23.

⁴⁵⁷ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10037, para. 123.

⁴⁵⁸ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10037, para. 123.

⁴⁵⁹ AKPIRG Comments at 4-5, ARCC Apr. 15, 2024 *Ex Parte* at 1.

⁴⁶⁰ AKPIRG Comments at 4-5.

⁴⁶¹ FCC, Broadband Data Collection, Data Specifications for Mobile Speed Test Data (November 18, 2022), <https://us-fcc.app.box.com/v/bdc-mobile-speedtest-spec>.

strata (and therefore all samples) in which the service providers must conduct on-the-ground testing.⁴⁶² This BDC sampling decision was made as part of a nationwide data collection requirement and was intended to ease the burden on mobile providers that might otherwise be required to conduct large scale on-the-ground testing. Coverage near roads is easier to test for all providers subjected to mobile speed test verification nationwide.⁴⁶³ However, for the Alaska Connect Fund, we are subsidizing the provider's coverage in all eligible areas where consumers live, work, and travel that the provider commits to cover for that support: this requires an expansion of the hexes required for the sampling to ensure funds are being used as committed to and justifies a more burdensome testing requirement for the mobile providers receiving those funds. For the Alaska Connect Fund, if the hexagon is testable by at least a UAS,⁴⁶⁴ then it will be considered accessible and will be included in the hexagons that are eligible to be sampled for Alaska Connect Fund mobile speed testing. Moreover, roads are scarce in Alaska and road data have proven unreliable in certain areas for the purposes of speed test sampling for high-cost support purposes in Alaska; expanding the accessible areas in this way allows us to avoid reliance on potentially inaccurate road data in Alaska.

172. WTB, in coordination with OEA, is directed to provide the mobile support recipients with a sample to test within four months after their milestones are due that tests network coverage for mobile service coverage for which support was received and showing mobile transmissions to and from the provider's network meeting or exceeding the minimum expected download and upload speeds in the approved performance plan. Since the sample may potentially include some hexes that may only be feasible and safely testable by UAS, we delegate to WTB, in coordination with OEA, to consider under what circumstances alternatives to on-the-ground speed testing data are appropriate to validate coverage in such areas, including use of UASs and to make any other accommodations to the testing necessary to determine whether the providers have met their commitments or not. There may be circumstances where other methods are equally safe to using a UAS but may better reflect the on-the-ground user experience; in which case, WTB, in coordination with OEA, may restrict the use of UASs in some hex-9s for speed testing purposes, even when UAS usage is otherwise permissible.

173. We reject the suggestion that USAC should conduct all on-the-ground speed tests and that those receiving more than \$5 million annually should reimburse USAC. Administration costs of USAC are built into USAC's contract to administer the program, and allowing the audited to pay the auditor invites perniciousness and has an appearance of impropriety. However, providers that submit on-the-ground speed tests may also be subject to drive tests by USAC.

174. If a hex-9 is determined to be untestable and, thus, ineligible and this is discovered during speed testing of a provider's commitments, the hex-9 will be counted as noncompliant with the provider's commitments. It should be noted that as a result of a random sampling methodology, such a hex-9 will likely represent other, unselected, hex-9s. The provider's support may be reduced accordingly, consistent with section 54.320(d).⁴⁶⁵

175. *Reporting and Certifications.* As many commenters have noted in the record, it is important that the Commission provide accountability and oversight to ensure universal service funds are being used for the purposes intended.⁴⁶⁶ Pursuant to section 54.313 of the Commission's rules, Alaska

⁴⁶² *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3059, para. 94.

⁴⁶³ *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3036-37, para. 51 ("We settle on this definition of "accessible" because without a road it becomes significantly more difficult for parties to run speed tests in a point-hex.").

⁴⁶⁴ For purposes of the Alaska Connect Fund only, we may count UAS speed tests as on-the-ground tests. We delegate to WTB, in coordination with OEA, to define such circumstances.

⁴⁶⁵ 47 CFR § 54.320(d).

⁴⁶⁶ See, e.g., NTCA Reply at 5-6; ARIC Comments at 11; ARCC Apr. 15 *Ex Parte* at 1-2.

Connect Fund mobile support participants must continue to file their FCC Form 481 on July 1 each year.⁴⁶⁷ Alaska Connect Fund mobile support recipients will also be subject to section 54.314 of the Commission's rules, which requires that support be used only for the provision, maintenance and upgrading of facilities and services.⁴⁶⁸ To provide accountability for Alaska Connect Fund mobile provider recipients, we require that no later than 60 days after the end of each participating mobile provider's commitment (milestone) deadline, it must submit a certification that it has met the obligations contained in the performance plan approved by WTB, including any obligations pursuant to a revised approved performance plan, and that it has met the requisite public interest obligations contained in the *Alaska Connect Fund Order*.⁴⁶⁹ Further, Alaska Connect Fund mobile support recipients, like all USF recipients, will be subject to requirements and certifications in sections 54.9, 54.10, and 54.11.⁴⁷⁰

176. *Middle-Mile Mapping.* The Alaska Plan requires participants to submit fiber network maps or microwave network maps in a format specified by WCB and WTB covering eligible areas and to update such maps if they have deployed middle-mile facilities in the prior calendar year that are or will be used to support their service in eligible areas.⁴⁷¹ These maps were limited to fiber and microwave links and nodes.⁴⁷² Providers are required to submit the locations of the links they own and provide conceptual links for their leased links.⁴⁷³ The Alaska Plan participant provides the amount of capacity available per link.⁴⁷⁴

177. We adopt an expanded version of the middle-mile requirement for Alaska Connect Fund mobile participants. Since the start of the Alaska Plan, the Commission has recognized the limitations associated with middle-mile access in Alaska.⁴⁷⁵ In the *Alaska Connect Fund Notice*, we acknowledged reports of prohibitively expensive middle-mile transport rates and sought comment on ways to improve middle-mile access and how to address middle-mile concerns for mobile providers in the Alaska Connect Fund.⁴⁷⁶ Commenters continue to demonstrate how middle mile can affect mobile deployment and costs.⁴⁷⁷ Addressed below, ARCC proposes a system for Commission support of ultra-high middle-mile expenses.⁴⁷⁸ While the AMMA does not support using high-cost support to build-out middle-mile infrastructure given other programs that focus on such infrastructure,⁴⁷⁹ AMMA recognizes the benefits of

⁴⁶⁷ 47 CFR § 54.313.

⁴⁶⁸ 47 CFR § 54.314.

⁴⁶⁹ See, e.g., 47 CFR § 54.321.

⁴⁷⁰ 47 CFR §§ 54.9 (prohibiting USF support to companies posing a national security threat), 54.10 (prohibiting capital expenditures provided by the Commission from obtaining or maintaining prohibited services or equipment); 54.11 (requiring a certification that supported networks do not utilize prohibited equipment).

⁴⁷¹ *Alaska Plan Order*, 31 FCC Rcd at 10172-73, para. 102.

⁴⁷² *Alaska Network- Mapping Order*, 33 FCC Rcd at 2081-87, Appx.

⁴⁷³ *Alaska Network- Mapping Order*, 33 FCC Rcd at 2081-87, Appx.

⁴⁷⁴ *Alaska Network- Mapping Order*, 33 FCC Rcd at 2081-87, Appx.

⁴⁷⁵ See *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86 ("Participants may also be permitted in particular circumstances to maintain lower levels of technology . . . due to such limitations as difficult terrain or lack of access to either terrestrial middle-mile infrastructure or satellite backhaul providing middle-mile service . . .").

⁴⁷⁶ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10021-22, paras. 83-84.

⁴⁷⁷ See, e.g., ATA Reply at 15-16; ATA May 6, 2024 *Ex Parte* at 1.

⁴⁷⁸ ARCC Comments at 4, 14-16; ARCC Petition at 6,.

⁴⁷⁹ AMMA Comments at 7.

first-hand monitoring of middle mile availability and rates given the high cost of service.⁴⁸⁰ Scarcity of backhaul and middle mile remains among the biggest reasons that service may not be available in an area. Even where middle mile is available in an area, it may not be affordable—costing \$700 per Mbps or more⁴⁸¹—which limits the speed of the service that a provider can offer in those areas. To better understand middle-mile limitations, we delegate authority to WTB to require each Alaska Connect Fund mobile provider to submit, *inter alia*, information about all backhaul and middle mile, regardless of technology, and the name of the middle mile provider(s) from which the last-mile Alaska Connect Fund mobile provider leases links. We also delegate authority to WTB to allow but not require providers to submit data regarding the price the provider pays per Mbps along each link. Including voluntary submission of data transport rates in WTB’s data collection will allow WTB to monitor whether data transport rates are being improved by the awards provided by other programs and to see if such awards allow the last-mile providers of the Alaska Plan to bring down their data transport rates. We note that we will continue to monitor concerns related to middle mile availability for Alaska Connect Fund mobile participants, and we will take action as we deem necessary.

178. *Point of Contact.* In the Alaska Plan, all mobile-provider participants had their initial performance plans accepted by WTB by the end of 2016.⁴⁸² Over the course of the Alaska Plan, the mobile-providers’ personnel responsible for submission of the initial performance plans may have parted from the company, in some cases leaving those newly responsible for compliance with the commitments without the necessary information for continued compliance. This situation has adverse effects for the mobile provider support recipient, the Alaskans they are serving, and the administration of universal service. To avoid this, Alaska Connect Fund mobile provider recipients must provide WTB a point of contact for discussions regarding performance plans and data submissions. Alaska Connect Fund recipients must notify WTB within 30 days whenever the point of contact changes at a company. All such notifications must be submitted to ACF@fcc.gov.

179. *Audits.* Like all ETCs, Alaska Connect Fund mobile support recipients will be subject to ongoing oversight to protect the success and integrity of the Alaska Connect Fund. All ETCs that receive high-cost support are subject to compliance audits and other investigations to ensure compliance with program rules and orders.⁴⁸³ Audits may include speed tests tailored to the circumstances of the information that is to be verified; providers under other speed test obligations may also be subject to any and all audits, including speed test audits. We retain discretion to recover funds or take other steps in the event of waste, fraud or abuse.

180. *Alaska Plan Obligations Unaffected.* As explained above, nothing in this Order shall be read as affecting the obligations owed by mobile-support recipients under the Alaska Plan; they remain obligated to meet their 10-year commitments (December 31, 2026) and all other Alaska Plan requirements at the end of the Alaska Plan.⁴⁸⁴

E. CYBERSECURITY AND SUPPLY CHAIN RISK MANAGEMENT REQUIREMENT

181. Consistent with the Enhanced Alternative-Connect America Cost Model (Enhanced A-CAM), BEAD, and 5G Fund programs, we require Fixed ACF and mobile provider support recipients to

⁴⁸⁰ See AMMA Comments at 8.

⁴⁸¹ ARCC May 3 *Ex Parte*, Attach.

⁴⁸² *Alaska Wireless Commitments Notice*, 31 FCC Rcd at 13318, 13320-23, Appx.

⁴⁸³ 47 CFR § 54.320(a).

⁴⁸⁴ See *supra* Section III.D.1. (Completion of Alaska Plan Period: January 2025 to December 2026).

implement operational cybersecurity and supply chain risk management plans.⁴⁸⁵ We require Fixed ACF support recipients to implement operational cybersecurity and supply chain risk management plans by January 2, 2029—the start of the Fixed ACF support term.⁴⁸⁶ We also require fixed recipients to submit and certify their cybersecurity and supply chain risk management plans with the Administrator by January 2, 2029. All mobile-provider recipients must implement their cybersecurity and supply chain risk management plans by December 31, 2029. Mobile provider recipients must also submit and certify to their cybersecurity and supply chain risk management plans with the Administrator by December 31, 2029.

182. The plans must reflect at least the National Institute of Standards and Technology’s Framework for Improving Critical Infrastructure Cybersecurity v.1.1 (2018) (NIST Framework),⁴⁸⁷ or any successor version of the NIST Framework adopted and must reflect established cybersecurity best practices that address each of the Core Functions described in the NIST Framework, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives (CISA CPGs)⁴⁸⁸ or the Center for Internet Security Critical Security Controls (CIS Controls).⁴⁸⁹ Recipients’ supply chain risk management plans must reflect the key practices discussed in NISTIR 8276, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry*,⁴⁹⁰ and related supply chain risk management guidance from NIST 800-161.⁴⁹¹ We delegate to the Bureaus and the Public Safety Homeland Security Bureau the authority, through opportunity for public notice and comment, to update these requirements and to consider whether to

⁴⁸⁵ See, e.g., October ABO Draft NOFO at 18, Appendix G (Cybersecurity and Supply Chain Risk Management attestation).

⁴⁸⁶ See *Alaska Connect Fund Notice*, 38 FCC Rcd at 10005-6, para. 49 (seeking comment on proposal to adopt cybersecurity and supply chain risk management plan requirements for Alaska Connect Fund recipients that reflect the latest version of standards provided by NIST, CISA and CIS as well as compliance standards similar to what was adopted in the *Enhanced A-CAM Order*; *Enhanced A-CAM Order*, 38 FCC Rcd at 7086-87, paras. 109-112.

⁴⁸⁷ NIST, *Framework for Improving Critical Infrastructure Cybersecurity*, v.1.1 (April 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>. A Fixed ACF recipient and a mobile-provider recipient will be considered in compliance with this requirement if its cybersecurity risk management plan reflects version 2.0 of the NIST Framework, or any successor versions that may be released with requirements in excess of version 1.1, so long as the cybersecurity risk management plan otherwise meets the requirements adopted here. See NIST, *Framework for Improving Critical Infrastructure Cybersecurity*, v.2.0 (Feb. 26, 2024), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf> (NIST Framework v.2.0).

⁴⁸⁸ See Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals and Objectives*, <https://www.cisa.gov/cpgs> (last visited Sept. 3, 2024).

⁴⁸⁹ See Center for Internet Security, *Critical Security Controls Version 8*, <https://www.cisecurity.org/controls> (last visited Sept. 3, 2024) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

⁴⁹⁰ See White House, Exec. Order No. 14028 (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>; NIST, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry* (Feb. 2021), <https://csrc.nist.gov/publications/detail/nistir/8276/final> (presenting the following as key practices: (1) integrating cyber supply chain risk management across the organization; (2) establishing a formal cybersecurity supply chain risk management program; (3) knowing and managing critical components and suppliers; (4) understanding the organization’s supply chain; (5) collaborating closely with key suppliers; (6) including key suppliers in resilience and improvement activities; (7) assessing and monitoring throughout the supplier relationship; and (8) planning for the full life cycle).

⁴⁹¹ NIST, *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations* (May 5, 2022), <https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final> (identifying critical success factors for cyber supply chain risk management).

require that Alaska Connect Fund recipients' cybersecurity risk management plans reflect at least NIST Framework v.2.0 (2024) or any other successor versions that may be released.

183. We also require recipients to submit their cybersecurity and risk management plans to USAC, and certify that they have done so, by the required deadline. Failure to submit the plans and make the certification shall result in 25% of monthly support being withheld until the recipient comes into compliance.⁴⁹² We delegate authority to the Bureaus to determine if further compliance consequences are necessary if a carrier does not comply for an extended period of time, for example, failure to come into compliance within six months of authorization to receive Fixed ACF or mobile provider support. Such consequences could include withholding additional or all Fixed ACF or mobile provider support.

184. Adopting these requirements emphasizes the critical importance of cybersecurity and supply chain risk management in modern broadband networks, consistent with broader initiatives across the federal government,⁴⁹³ while striking an appropriate balance to ensure compliance with this important requirement that avoids disproportionate disruption to recipients' support. This action is consistent with the BEAD Program, which requires recipients to maintain cybersecurity risk management plans that reflect the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity.

185. If an ACF recipient makes a substantive modification to its cybersecurity or supply chain risk management plan, we require that carrier to submit its updated plan to USAC within 30 days of making that modification. A modification to a cybersecurity or supply chain risk management plan will be considered as substantive if at least one of the following conditions apply:

- There is a change in the plan's scope, including any addition, removal, or significant alternation to the types of risks covered by the plan (e.g., expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);
 - There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);
 - There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);
 - There is a shift in the threat landscape prompting the organization to recognize that emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;
 - Updates are made to comply with new cybersecurity regulations, standards, or laws;
 - Significant changes are made in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain;
- or

⁴⁹² A 25% withholding of support is equivalent of Tier 3 of non-compliance under 47 CFR § 54.320(d)(1). A carrier may consider its "plans" for addressing cybersecurity and supply chain risks to be separate because they entail different kinds of actions. Nonetheless, carriers may satisfy this requirement by submitting to USAC a single document that contains both their cybersecurity risk management and supply chain risk management plans. This will likely be the case for most, if not all, carriers because implementing the NIST Framework for Improving Critical Infrastructure Cybersecurity, as we require carriers to do, includes an examination and treatment of supply chain risks.

⁴⁹³ See White House, Exec. Order No. 14028 (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>; NIST, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry* (2021), <https://csrc.nist.gov/publications/detail/nistir/8276/final>; Infrastructure Act § 60102(g)(1)(B) (mandating compliance with "prudent cybersecurity and supply chain risk management practice").

- A large-scale technological change is made, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

186. Further, in their FCC Form 481 filings following each subsequent support year, Fixed ACF recipients shall certify that they have maintained their plans, whether they have submitted modifications in the prior year, and the date any modifications were submitted.⁴⁹⁴ At any point during the support term, if a Fixed ACF or mobile provider recipient does not have in place operational cybersecurity and supply chain risk management plans meeting the Commission's requirements, we direct the Bureaus to withhold 25% of the Fixed ACF or mobile provider recipient's support until the Fixed ACF or mobile provider recipient is able to come into compliance.⁴⁹⁵ Once the Fixed ACF or Alaska Connect Fund mobile support recipient comes into compliance, the Administrator shall stop withholding support, and the support recipient will receive all of the support that had been withheld pursuant to this section. As above, we delegate authority to the Bureaus to determine if further compliance consequences are necessary during the Fixed ACF or mobile provider support term. The requirements we adopt here will improve the cybersecurity of the nation's broadband networks and protect consumers from online risks such as fraud, theft, and ransomware that can be mitigated or eliminated through the implementation of accepted security measures.

187. These cybersecurity requirements are appropriately tailored to mitigate burdens on small entities while maintaining the integrity of our nation's networks. APT suggests that adopting a cybersecurity and risk management plan is too costly and difficult for small rural carriers, particularly without a template.⁴⁹⁶ To the contrary, these rules were designed to mitigate concerns that development and implementation of cybersecurity plans are expensive and time consuming.⁴⁹⁷ As ARCC noted, ACF recipients "can meet this metric by submitting a single document that contains both their cybersecurity risk management and supply chain risk management plans . . . because implementing the National Institute of Standards and Technology ("NIST") Framework for Improving Critical Infrastructure Cybersecurity . . . includes an examination and treatment of supply chain risks."⁴⁹⁸ We afford carriers flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs, and the frameworks we utilize here are inherently flexible as well, accounting for the needs of entities of all sizes. We expect that our approach will reduce compliance costs by allowing carriers that have already implemented the NIST Framework for Improving Critical Infrastructure Cybersecurity to comply with this requirement without redoing their plan so long as they implement an established set of cybersecurity best practices. To further mitigate costs for small providers, as suggested by NTCA, we encourage Fixed ACF recipients and mobile provider support recipients to take advantage of existing federal government resources designed to share supply chain security risk information with trusted communications providers and suppliers and facilitate the creation of cybersecurity and supply-chain risk management plans, in addition to the growing industry of professional consultants helping smaller carriers comply with cybersecurity requirements.⁴⁹⁹ We believe

⁴⁹⁴ 47 CFR § 54.313.

⁴⁹⁵ 47 CFR § 54.320(c) ("Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action. . .").

⁴⁹⁶ See APT Comments at 28. See also ATA Comments at 33-34 (contending that it shares the goal of protecting national security, but cautioned that requirements should be risk based and that small Alaska Fund mobile participants may require significant technical assistance).

⁴⁹⁷ APT is an eligible carrier and ETC that currently receives high-cost support under the A-CAM program.

⁴⁹⁸ ARCC Comments at 13.

⁴⁹⁹ See ISAO, *FCC Small Business Cyber Planner 2.0*, <https://www.isao.org/fcc-small-business-cyber-planner-2-0/> (last visited Sept. 3, 2024); see also Federal Communications Commission, *Cybersecurity for Small Businesses*, <https://www.fcc.gov/communications-business-opportunities/cybersecurity-small-businesses> (last visited Sept. 3, 2024). (continued....)

that implementation of these approaches facilitates the nation's cybersecurity goals and properly accommodates recipients of the Alaska Connect Fund.

F. DIGITAL EQUITY

188. The Commission sought comment on how the proposals and issues discussed in the *Alaska Connect Fund Notice* may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority to address any such issues for both fixed and mobile services in Alaska.⁵⁰⁰ Commenters pointed out areas where attention to digital equity can improve access to advanced telecommunications in Alaska. Specifically, AKPIRG pointed out that language diversity within the state can create barriers to access.⁵⁰¹ ARCC agreed with NTCA in the need for working collaboratively with state and local governments to encourage program flexibility to allow for the unique situations of different communities.⁵⁰² ARCC suggested that obligations match support amounts, stating that a "one size fits all" approach is not one that fits the makeup of the state of Alaska.⁵⁰³ ARCC points to differences in middle mile costs in Alaska compared to the Lower 48, suggesting that its AMMES Petition would "bring positive impacts and advancement to diversity and equity in remote regions of the state of Alaska."⁵⁰⁴ ARCC also encourages the Commission to use "discretion and flexibility . . . as circumstances vary across the country."⁵⁰⁵ APT asks the Commission to consider the scalability of its requirements and the impacts of its decisions on small businesses and on carriers operating in and servicing remote areas of Alaska.⁵⁰⁶ We find that our actions today appropriately address commenters' suggestions. Most notably, we take action today to allow WCB flexibility to consider a variety of providers for Fixed ACF support, and to work in collaboration with other federal and state programs to find the appropriate solution for Alaska given our resources. Moreover, the overall increase in support amounts for both fixed and mobile providers allows each recipient the ability recover more cost associated with middle mile transport, addressing concerns raised in ARCC's petition while continuing to give providers flexibility to use their support in the most advantageous ways to serve consumers in their respective remote regions—including by using support from this and other programs to connect their networks to areas with more competitive transport rates.⁵⁰⁷

(Continued from previous page)

2024); *see also* Cybersecurity and Infrastructure Security Agency, *CISA Cybersecurity Awareness Program Small Business Resources*, <https://www.cisa.gov/publication/stopthinkconnect-small-business-resources> (last visited Sept. 3, 2024); ISAO Standards, National Institute of Standards and Technology (NIST), *Planning Tools & Workbooks*, <https://www.nist.gov/itl/smallbusinesscyber/planning-tools-workbooks> (last visited Sept. 3, 2024). *See also* CISA, *ICT Supply Chain Risk Management Task Force Resources*, <https://www.cisa.gov/resources-tools/groups/ict-supply-chain-risk-management-task-force> (last visited Sept. 3, 2024); CISA, *Vulnerability Management – Vulnerability Scanning, Analysis, and Reporting*, <https://www.cisa.gov/resources-tools/services/vulnerability-management-vulnerability-scanning-analysis-and-reporting> (last visited Sept. 3, 2024); NIST, *Cybersecurity Framework, CSF 2.0 Informative References*, <https://www.nist.gov/informative-references> (last visited Sept. 3, 2024); CISA, *ICT Supply Chain Resource Library*, <https://www.cisa.gov/ict-supply-chain-resource-library> (last visited Sept. 3, 2024); NTIA, *CSCRIP, Cyber Risk Management*, <https://cscrip.ntia.gov/cyber-risk-management> (last visited Sept. 3, 2024).

⁵⁰⁰ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10039-40, para. 130.

⁵⁰¹ *See* AKPIRG Comments at 6 (noting that a sixth grade writing level is appropriate for documents intended for public consumption).

⁵⁰² ARCC Comments at 32 (citing NTCA Comments from the Future of USF Report docket).

⁵⁰³ ARCC Reply at 4-5.

⁵⁰⁴ ARCC Comments at 32; *see also* ARCC Reply at 12.

⁵⁰⁵ ARCC Comments at 32.

⁵⁰⁶ APT Comments at 28 (discussing compliance with regulatory requirements).

⁵⁰⁷ We also reiterate that we will continue to monitor the impact of middle-mile costs on mobile service in Alaska.

189. As we continue to implement and administer the Alaska Connect Fund, we remain mindful of the importance of considering how we can promote diversity, equity, inclusion, and accessibility and the impact our rules have on these issues. We emphasize that one of the general principles of the Universal Service Fund is to create equal access for every consumer in America to high-speed broadband in underserved and unserved areas.⁵⁰⁸ To that end, the Commission has long used its Universal Service high-cost funding programs to further consumer access to broadband and bridge the digital divide. Most recently, the Commission adopted universal service goals for broadband—universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.⁵⁰⁹ Accordingly, we are committed to ensuring that the policies and rules we have adopted for the Alaska Connect Fund remain in accord with the Commission’s general efforts to advance digital equity for all.⁵¹⁰

190. We note that the State of Alaska has been allocated \$567,800 under the NTIA State Digital Equity Planning Grant Program to develop the Alaska Digital Equity Plan as well as \$5,631,769.64 under the NTIA Digital Equity Capacity Grant Program, and has been working to develop guidelines for the in-state grant program. NTIA and the State of Alaska are expected to distribute funds in the near term.⁵¹¹ We will continue to work together with the State to determine how our actions can best complement those of the state and further digital equity across Alaska.

IV. ALASKA MIDDLE MILE EXPENSE SUPPORT PETITION

191. ARCC filed a petition in November 2022, requesting the Commission initiate a rulemaking to address the extremely high costs of middle mile transport expenses in Alaska by adopting its Alaska Middle Mile Expense Support (AMMES) to provide funding support to carriers servicing locations with ultra-high costs.⁵¹² Under the AMMES system and its mobile-specific Wireless Alaska Middle Mile Expense Support (WAMMES) system,⁵¹³ eligible providers with performance commitments from the Alaska Plan, Alternative Connect America Model (A-CAM), or Connect America Fund (CAF II), may have a portion of their costs subsidized for areas in their plans that are designated “ultra-high cost.”⁵¹⁴ For these ultra-high cost areas (where middle mile costs exceeding \$75/Mbps), ARCC proposes

⁵⁰⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, (1997); see also 47 U.S.C. § 254(b)(2) (providing that universal access to advanced telecommunications and information services is a basic policy principle of the universal service program).

⁵⁰⁹ *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, 37 FCC Rcd 10041, 10046, para. 12 (2022), <https://docs.fcc.gov/public/attachments/FCC-22-67A1.pdf>.

⁵¹⁰ 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.

⁵¹¹ See State of Alaska Department of Commerce, Alaska Broadband Office, *Program Overviews and Timelines*, <https://www.commerce.alaska.gov/web/abo/ProgramOverviewsandTimelines.aspx> (last visited Aug. 6, 2024), United States Department of Commerce, National Telecommunications and Information Administration, *Funding Programs, Internet For All, Digital Equity Act Programs*, <https://www.ntia.gov/funding-programs/internet-all/digital-equity-act-programs> (last visited Aug. 8, 2024).

⁵¹² ARCC Petition at 3, <https://www.fcc.gov/ecfs/document/1130479802393/1>.

⁵¹³ See Letter from Jeffry H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208, Attach. A at 2 (June 11, 2024) (ARCC June 11, 2024 *Ex Parte*).

⁵¹⁴ ARCC Petition at 6-7; ARCC June 11, 2024 *Ex Parte*, Attach. A at 4.

to have AMMES and WAMMES cover a portion of the costs of either leasing middle mile capacity from a third-party provider, or recovering the operating costs of facilities constructed by the provider.⁵¹⁵

192. We deny ARCC's AMMES petition in all of its iterations.⁵¹⁶ We find that a guaranteed stream of funding with specified payment amounts for prices above a specific dollar amount only incentivizes transport providers to continue to raise their rates.⁵¹⁷ The support the Alaska Connect Fund offers, in addition to the large increase in support reflecting the changes discussed above, allows providers serving Alaska to address high transport rates in two ways. First, providers may use funds to build out their own transport networks, even in ineligible areas, so long as those funds are necessary to meet their commitments in eligible areas. This build-out can include building facilities that connect their networks to areas where transport is competitively priced. Second, by providing Alaska Connect Fund support recipients static funding, the last-mile provider maintains incentives to negotiate aggressively with transport providers for lower rates. In addition to the mechanisms within the Alaska Connect Fund to address this issue, we observe that there are several other federal programs that can aid the Alaska Connect Fund last-mile providers in building out infrastructure to connect their service areas and run their own transport lines to competitively priced transport areas. Similar to RUS funded projects, NTIA's BEAD program can indirectly support construction of new middle mile facilities to meet the increased speed goals of that program.⁵¹⁸ Finally, the approach that ARCC proposes for AMMES is a rate-of-return type mechanism. Such mechanisms can lead to waste and inefficiency, and the Commission has made clear that additional rate-of-return regulation is not the preferred future direction of the high-cost program.⁵¹⁹ For these reasons, we deny ARCC's petition. However, the Commission will continue to monitor the impact of middle mile transport rates on the availability of fixed and mobile service in Alaska.

⁵¹⁵ ARCC Petition at 6-7; ARCC June 11, 2024 *Ex Parte*, Attach. A at 4.

⁵¹⁶ See generally ARCC Petition; ARCC Comments; ARCC Reply; Letter from Jeffry H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208 (Nov. 8, 2023) (ARCC Nov. 8, 2023 *Ex Parte*); Letter from Jeffry H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208 (Mar. 16, 2024) (ARCC Mar. 16, 2024 *Ex Parte*); Letter from Jeffry H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208 (Apr. 15, 2024) (ARCC Apr. 15, 2024 *Ex Parte*); Letter from Jeffry H. Smith, VP of Public Policy and Advocacy, ARCC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 23-328, 14-58, and 09-197, WT Docket No. 10-208 (May 3, 2024) (ARCC May 3, 2024 *Ex Parte*); ARCC June 11, 2024 *Ex Parte*.

⁵¹⁷ See ARCC Petition at 7 ("The AMMES support is targeted to cover a portion of the costs of either leasing middle-mile capacity from a third party provider or recovering the operating costs of facilities constructed by the carrier." . . . "The AMMES proposal supports Alaska ETCs who demonstrate middle-mile costs exceeding \$75/Mbps."); *id.* at 10 (advocating for additional support for ultra-high middle-mile transport operating costs paid to third parties); *id.* at 18 (summarizing the AMMES support calculator mechanism).

⁵¹⁸ See United States Department of Agriculture, *ReConnect Program: Frequently Asked Questions General Application Inquiries for Round 5 Funding Opportunities* at 12, <https://www.usda.gov/sites/default/files/documents/reconnect-program-faqs.pdf> (last updated Mar. 26, 2024) ("stand-alone, middle-mile projects are not eligible. However, middle-mile facilities are eligible if they are necessary to bring sufficient broadband service to all premises in the Proposed Funded Service Area."); BEAD NOFO at 33, n.43.

⁵¹⁹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17674, 17738, paras. 26-27, 194-95 (implementing reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return local exchange carriers).

V. FURTHER NOTICE OF PROPOSED RULEMAKING

193. In this Further Notice, we seek comment on a number of issues related to the implementation of the Alaska Connect Fund.

194. As an initial matter, for ACF Mobile Phase II, we seek comment on a methodology to determine a support amount for areas where more than one mobile provider had been receiving support for overlapping service areas. This mechanism may also be used to determine support amounts to claw back for areas that we deem ineligible for mobile support in the Order in the event that support is not shifted to a comparable area.

195. Additionally, we seek comment on ACF Mobile Phase II service requirements, as well as how to eliminate duplicative support in ACF Mobile Phase II so that only one provider would continue to receive funding in duplicate-support areas. First, we seek comment on a competitive mechanism for awarding support to one provider in duplicate-support areas. Second, we seek comment on an alternative mechanism to address duplicate-support areas that would designate one provider that would continue receiving support in the same area, and would allow other providers to choose different areas to serve to continue receiving the previous support levels.

196. In addition, we seek to update the record on how best to deploy mobile service to areas that remain unserved with the \$162 million from the Alaska Plan that has been reallocated toward this purpose. Further, we seek comment on conducting a reverse auction to award support to competitive ETCs to deploy advanced communications networks in these areas.

197. We seek comment on additional issues for implementation of the mobile portion of the Alaska Connect Fund, for both the two support-area plan established in the *Report and Order* and the ACF Mobile Phase II as described in this *Further Notice*. We seek comment on retail consumer conditions, including seeking comment on a proposal to impose a minimum subscriber requirement for Alaska Connect Fund mobile participants, as well as seeking comment on marketing on Tribal lands. We also seek further comment on offering incentives to deploy networks with Open Radio Access Network (Open RAN). Finally, we seek further comment on Tribal consent under both the mobile and fixed portions of the Alaska Connect Fund.

A. Determining Support Amounts By Area

198. We seek comment on how to determine support amounts by area for purposes of the mobile portion of the Alaska Connect Fund—for example, to determine the support amounts for duplicate-support areas and single-support areas, as well as previously supported areas that are no longer eligible. In the Alaska Plan, providers were awarded funding based on statewide commitments.⁵²⁰ Because we adopt an area-based approach for the mobile portion of the Alaska Connect Fund, we must establish a way to disaggregate total support across smaller geographic areas. Specifically, in order to address issues involving providers serving areas that are ineligible in the Alaska Connect Fund but were eligible in the Alaska Plan (e.g., areas which have an unsubsidized provider of 5G-NR at 7/1 Mbps in an outdoor stationary environment or three or more mobile providers offering at least 4G LTE at 5/1 Mbps in an outdoor stationary environment—with at least one of those providers being unsubsidized—based on BDC coverage data as of December 31, 2024), we must calculate how much support has been allocated to these ineligible areas. In the *Alaska Connect Fund Notice*, the Commission asked if duplicate funds could be redistributed “by calculating the support that eligible providers are receiving per hexagon across all of that provider’s service areas and subtracting the support that the provider receives per hexagon in a

⁵²⁰ See *Alaska Plan Order*, 31 FCC Rcd at 10166-67, para. 85 (requiring performance plans to commit to cover delineated populations but not requiring further specificity regarding where in the eligible areas they are to be covered).

particular service area?”⁵²¹ As no commenters directly addressed this question, we seek comment on the methodology below to calculate Alaska Plan support in specific areas, at the hex-9 level.

199. Because mobile providers have statewide buildout requirements under the Alaska Plan,⁵²² calculating a provider’s rate of support in any given area is particularly complicated, since providers that receive support to cover multiple areas are not required to spend that money in any particular area. A provider’s average rate of support over all areas is likely not to reflect the amount of support it uses to cover any particular area. However, the average support rate for a provider that receives support for a more targeted area is more likely to reflect the amount of support that the provider needs to cover that area. Based on that assumption, we seek comment on whether to iterate through the Alaska Plan participants, from smallest footprint to largest, using the smaller providers’ support as proxies for the support for larger providers in areas where they overlap.

200. To provide a detailed example of the above, we would first consider the support of the provider covering the fewest number of hex-9s located in Alaska Plan eligible census blocks (Provider A).⁵²³ Specifically, we would divide Provider A’s annual support by the total number of hex-9s that the provider covers in Alaska Plan eligible census blocks to calculate an average value for each covered hex-9. A hex-9 would be considered covered by a provider if 70% of the grandchild hex-11s were covered at the centroid, using the union of December 2024 BDC mobile broadband and mobile voice coverage for that provider. For example, if Provider A receives \$100,000 in annual support and covers 1,000 hex-9s in Alaska Plan eligible blocks, each such hex-9 it covers would be said to receive \$100 in annual support.

201. We would then evaluate the support of the provider covering the second fewest hex-9s in Alaska Plan eligible census blocks (Provider B). We would first determine if Provider B covered any of the same hex-9s as Provider A. If so, the value of those hex-9s would be the same as for Provider A; in this example, \$100 per hex-9. We would subtract the funding of these duplicate hex-9s from Provider B’s total annual support, and divide the remaining annual support by the remaining covered hex-9s to calculate the funding for each hex-9 that is not duplicated by Provider A. To continue the example, suppose Provider B receives \$150,000 in annual support and covers 2,500 hex-9s in Alaska Plan eligible blocks, and that 500 of these hex-9s are also covered by Provider A. In this case, we would say that 500 of its hex-9s would each be assigned a value of \$100, for a total of \$50,000. We would then calculate that the remaining \$100,000 of support spread across the remaining 2,000 hex-9s results in each non-duplicate hex-9 receiving \$50 of support. Alternatively, if there were no overlap between Providers A and B, the calculation for Provider B would follow the same process as Provider A, distributing \$150,000 across the 2,500 hex-9s, resulting in each hex-9 covered by Provider B receiving \$60 of support.

202. This process would be repeated with the provider covering the next largest area, or Provider C, such that its hex-9s that overlap with Provider A would be valued the same as for Provider A (\$100 in the above example), the hex-9s that overlap with Provider B would be valued the same as for Provider B (\$50 in the above example), and the remaining hex-9s as the average of the remaining support. (Note that if Providers A, B, and C all overlap in some hex-9s, the value would be at Provider A’s average, or \$100 in this example). The process would then iterate through the remaining providers, smallest to largest in terms of covered hex-9s in eligible Alaska Plan blocks, until a value has been assigned for every covered hex-9. Note that it would theoretically be possible for the largest of the eight

⁵²¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10025, para. 94.

⁵²² See *Alaska Plan Order*, 31 FCC Rcd at 10166-67, para. 85; see, e.g., *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9539-40 (committing to cover 139,357 Alaskans throughout the state in eligible areas of the Alaska Plan).

⁵²³ See Letter from Julie Veach, Counsel to GCI Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 16-271, Attach. (Nov. 29, 2016) (GCI Nov. 29, 2016 *Ex Parte*) (listing frozen support eligible census blocks).

Alaska Plan providers to have hex-9s valued at each of the smaller seven provider's averages, and then have its own average for its remaining hex-9s.

203. Further, we would also use these values to determine the amount of ACF support at stake in areas no longer eligible in the Alaska Connect Fund. Continuing the example above, if 100 of Provider B's non-duplicate hex-9s were no longer eligible, the value of those hex-9s would be \$5,000. If Provider B were not able to commit to cover comparable hex-9s in its performance plan,⁵²⁴ its annual ACF support would be reduced by \$5,000. Similarly, if the 100 ineligible hex-9s were covered by both Providers A and B, the value of each hex-9 would be \$100, and the at-stake ACF support would be \$10,000 for each provider.

204. We seek comment on the above methodology. Should hex-9s covered by more than one provider have the same value to each provider, or should we adopt a different method that allows for heterogeneous support levels for such hex-9s? Should we instead apportion support based on another metric, such as covered BSLs or population? Should hex-9s within the same geographic area, such as a census tract or borough, all be assigned the same value, regardless of whether or not a given hex-9 is covered by more than one provider?

205. We also seek comment on whether to use this methodology to determine support amounts by area for use in a competitive—or alternative—mechanism for addressing duplicate support in ACF Mobile Phase II. We seek comment on whether this would be an effective methodology for determining duplicate support amounts. Additionally, we seek comment on the effectiveness of this methodology to calculate the amount of support to be clawed back in the event that a provider serving areas deemed ineligible for Alaska Connect Fund, as set forth in the Order, is not able to—or chooses not to—serve comparable areas. Further, we ask whether the Commission should use this or a similar hex-9-based methodology to calculate the value of ACF Phase I commitments. Are there other uses for this methodology in the mobile portion of the Alaska Connect Fund? Finally, if commenters have concern about this methodology, we seek comment on alternative methodologies to calculate support amounts for these particular areas. We seek comment generally regarding how to determine the support amounts per area.

B. ACF Mobile Phase II Service Requirements

206. We seek comment on the level of service that we should expect from mobile providers that receive support under ACF Mobile Phase II of the Alaska Connect Fund. Since the adoption of the *Alaska Plan Order*, mobile wireless technologies have advanced significantly, and the Commission has moved toward supporting 5G-NR as the standard for high-cost mobile-wireless deployment.⁵²⁵ Despite this, the current Alaska Plan still supports 2G, 3G, and 4G LTE networks.⁵²⁶ While we recognize that Alaska presents unique challenges when deploying mobile networks, we also must recognize the advances in mobile wireless technologies that have been made since the adoption of the Alaska Plan; therefore we tentatively conclude that continuing to fund such obsolete technologies would be both inefficient and contrary to the Commission's statutory mandate that consumers in rural and high-cost

⁵²⁴ See *supra* Section III.D.2.d.iv. (Comparable Service Areas).

⁵²⁵ *5G Fund Second Report and Order* at 14, para. 21 (defining eligible areas based on a lack of unsubsidized 5G mobile service is more consistent with the 5G-centered approach envisioned for the 5G Fund).

⁵²⁶ Based on staff analysis from December 2023 AK Special Collection LTE filings, intersected with the Alaska Population Distribution Model. See *Alaska Population Distribution Model Order*, 35 FCC Rcd at 10373-74, para. 2-3. Two of the eight mobile providers continue to have commitments to provide some Alaskans with 3G or less at the December 31, 2026 final milestone. *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd 9539-40 (approving the current operative plan for GCI, which commits to cover 8,622 Alaskans with 3G and 10,487 Alaskans with 2G by December 31, 2026); *Three Updated Alaska Performance Plans*, Public Notice (approving revised performance plans for the three mobile providers with 2G commitment for TelAlaska—technology code 86—covering 1,663 Alaskans by December 31, 2026).

areas “should have access to” advanced communications “that are reasonably comparable to those services provided in urban areas.”⁵²⁷ As such, for ACF Mobile Phase II, we seek comment on whether to set a goal of 5G-NR 7/1 Mbps or whether to make this a requirement of ACF Mobile Phase II. Given that 4G LTE at 5/1 Mbps is already available in many parts of Alaska,⁵²⁸ particularly in areas with duplicate support, we believe that this service level is achievable, and we seek comment on this. However, we provide a preference for higher deployment speeds when selecting winners in the competitive mechanisms, and therefore we expect that providers will be incentivized to offer 5G-NR 35/3 Mbps services in areas where it is technically and financially feasible. We seek comment on this approach. Alternatively, should we make 5G-NR 35/3 Mbps the technology and speed goal (consistent with our approach for single-support areas by 2034, as adopted in the Order)? Should we make this a requirement?

207. Additionally, if we were to adopt a 5G-NR goal or minimum standard, should there be areas where providers are allowed to meet a lesser speed standard? For example, should areas with high middle-mile costs be required to deploy 5G-NR but only be required to meet a lower speed threshold, and if so, how would we determine areas with high transport costs? Should the goal or minimum service requirements be lower for providers seeking to deploy in unserved areas? In the alternative, should we continue to fund 4G LTE networks, and if so, under what conditions? If we adopt 5G-NR 7/1 Mbps as the goal or minimum performance standard, how much time should we give carriers to upgrade their networks to meet this new standard? Should the adopted service goal or minimum deployment standard evolve over time to a higher standard so that it does not become outdated?

C. Competitive Mechanism to Eliminate Duplicate Support

208. We seek comment on the appropriate mechanism to eliminate duplicate support in the mobile portion of the Alaska Connect Fund. It is generally not the policy of the Universal Service Fund to subsidize competition in high-cost areas.⁵²⁹ Therefore, in the high-cost program, the Commission has sought to eliminate duplicate support—the provision of support to more than one competitive ETC in the same area.⁵³⁰ In the *Alaska Connect Fund Notice*, the Commission expressed concern that many areas were receiving duplicate support under the Alaska Plan.⁵³¹ To address the issue of duplicate support, in this Further Notice, we seek comment on whether to adopt a competitive mechanism to decide which competitive ETC should be awarded the support for a given geographic area based on which provider proposes the best combination of coverage and service offerings for each community. Under this proposal, providers seeking to be chosen as the provider for a given community will submit proposed coverage maps for the areas where more than one provider currently receives support, as well as the surrounding community where no provider currently offers service (i.e. unserved hex-9s within a larger geography that contains the duplicate support hex-9s). Based on these coverage map offers, the competitive mechanism would then determine which competitive ETC to support based on which

⁵²⁷ 47 U.S.C. § 254(b)(3).

⁵²⁸ See FCC, *FCC National Broadband Map*, <https://broadbandmap.fcc.gov/area-summary/mobile?version=dec2023&geoid=02&type=state&zoom=4.00&vlon=-157.671988&vlat=63.819575&tech=tech4g&env=0> (last visited August 29, 2024).

⁵²⁹ See, e.g., 47 CFR § 54.319; *USF/ICC Transformation Order*, 26 FCC Rcd at 17722, 17779-80, paras. 148 n.238, 316-320; *Connect America Fund; Universal Service Reform—Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2156, para. 10 (2017) (*Mobility Fund Phase II Report and Order*) (stating unnecessary subsidies “may deter investment by unsubsidized competitors from increasing competition in those areas”); see also 47 U.S.C. § 254(k) (prohibiting telecommunications carriers from using uncompetitive services “to subsidize services subject to competition”).

⁵³⁰ *Alaska Plan Order*, 31 FCC Rcd at 10169, para. 92; *USF/ICC Transformation Order*, 26 FCC Rcd at 17780, 17829, paras. 319, 507.

⁵³¹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10024, para. 90.

provider proposes to deploy the 5G network with the best combination of speed and coverage to the duplicate-support areas and surrounding unserved areas. We seek comment on this approach.

1. Eligible Providers

209. As discussed in the Order above, in ACF Mobile Phase I, we limit support to mobile ETCs that participated in the Alaska Plan, subject to other eligibility requirements. However, for ACF Mobile Phase II, in order to maximize competition in the competitive mechanism, we seek comment on whether to permit any competitive ETC, including competitive ETCs that do not already receive support for mobile service in remote Alaska, to be eligible to participate. We believe that this approach would encourage new mobile providers to emerge in Alaska, including those that are not currently ETCs or that were not eligible for the Alaska Plan. We see no reason why a mobile provider that meets all other criteria to participate in a competitive process should be deemed ineligible solely because it is not currently receiving Alaska Plan support. We tentatively conclude that this approach will stretch our scarce universal service dollars further and result in better service for Alaskans, and we seek comment on this tentative conclusion. We seek comment on whether these are the appropriate eligibility criteria and whether any additional factors should be considered.

210. As mentioned above, several current participants in the Alaska Plan have failed to meet their commitments.⁵³² In the Order above, we determined that an Alaska Plan mobile provider participant may have its Alaska Connect Fund support delayed, reduced, or may be deemed ineligible from the Alaska Connect Fund, if WTB determines that the provider has failed to comply with the public interest obligations or other terms and conditions of the Alaska Plan or its Alaska Plan commitments, or failed to meet a build-out milestone.⁵³³ This determination—and delegation to WTB—extends to eligibility to participate in the mechanisms we discuss in this *Further Notice*. In short, Alaska Plan providers that have been deemed ineligible for Alaska Connect Fund will be ineligible for ACF Mobile Phase II support.⁵³⁴ We seek comment on this approach. Should there be a process by which an ineligible provider under these criteria could be once again deemed eligible?

2. Eligible Areas and Geographic Unit for Competitive Offers

211. As discussed above in the Order,⁵³⁵ we will determine whether an area is ineligible, a duplicate-support area, a single-support area, or unserved at the hex-9 level. We seek comment on whether only eligible duplicate support and unserved hex-9s should be eligible for support in the competitive mechanism. Under this proposal, single support hex-9s and ineligible hex-9s will both be ineligible for support in the competitive mechanism. We also seek comment on whether to aggregate eligible hex-9s into census tracts as the minimum geographic unit for which we will accept competing offers. Should we use an alternative Census geography for accepting competing offers? Alternatively, should eligible hex-9s be aggregated into a lower resolution (larger) hexagon such as a hex-7? We seek comment on these proposals.

3. Determining the Budget for each Census Tract with Eligible Areas

212. Based on the previously discussed methodology for determining the amount of support associated with each hex-9,⁵³⁶ we seek comment on whether to establish a budget for each census tract with duplicate support areas as follows. After determining the support for each duplicate support hex-9, based on the disaggregation of statewide support methodology we adopt, we seek comment on whether to

⁵³² See *supra* Section III.D.2.d.i. (Eligible Providers).

⁵³³ See *supra* Sections III.D.2.d.i. (Eligible Providers), III.D.4. (Accountability and Oversight).

⁵³⁴ 47 CFR § 54.320(d)(2).

⁵³⁵ See *supra* Section III.D.2.c. (Determining Coverage Areas for Alaska Connect Fund).

⁵³⁶ See *supra* Section V.A. (Determining Support Amounts by Area).

establish a total duplicate support amount for each census tract with duplicate support areas that is equal to the sum, over all duplicate support hex-9s, of the calculated support amount for each duplicate support hex-9.⁵³⁷ If the duplicate support amount associated with each hex-9 is different by provider based on the adopted disaggregation methodology, we seek comment on whether the total support amount associated with a tract with duplicate support areas should be equal to the sum of the maximum amounts of duplicate support any provider receives for the eligible duplicate support hex-9s. In this case, we seek comment on whether to use the sum of these maximum amounts so that we ensure support is sufficient to maintain the existing available coverage within the duplicate support areas. Would this approach provide sufficient support to, at a minimum, maintain existing coverage? Would this level of support allow the awarded provider to enhance its coverage within the supported hex-9s to provide 5G-NR services? Would an alternative budget such as the total support associated with all supported providers in the duplicate support areas be a more appropriate amount, and if so, why?

4. Submission of Proposals

213. For each census tract with duplicate support areas, we seek comment on whether an eligible ETC could submit a proposal to be the sole recipient of the duplicate support amount for the census tract. Under this approach, a competitive ETC's proposal would consist of a proposed coverage map for a census tract that complies with the BDC mobile coverage data requirements and must predict 5G-NR coverage in an outdoor stationary environment.⁵³⁸ We seek comment on whether eligible ETCs may propose to cover a subset of the eligible areas within a tract with 5G-NR 7/1 Mbps service or 5G-NR 35/3 Mbps service, and that they would be required to submit separate coverage maps for each proposed service. We seek comment on these proposals. In order to ensure that coverage map proposals are comparable, should we set uniform propagation model parameters for all submitted coverage maps? Alternatively, could an eligible ETC's bid be more general within a biddable area, such that it promises to deploy to a certain number of hex-9s with a specified level of service, but does not specify exactly which hex-9s?

5. Evaluation of Proposals and Winner Determination

214. For each census tract receiving coverage offers, we seek comment on whether to evaluate the proposals and determine a single winner for each area based on a combination of the scope of proposed geographic coverage and service levels to the eligible areas within the tract, as determined by submitted coverage maps. We seek comment on this approach. Specifically, based on the coverage maps submitted, we seek comment on whether we should calculate a weighted percent coverage of the eligible hex-9s in the census tract for each proposal received and award the entire duplicate support amount for the tract to the ETC that proposes the highest weighted percent coverage of eligible hex-9s. In this calculation, hex-9s would receive different weights depending on whether they would be covered with 7/1 Mbps or 35/3 Mbps 5G-NR service under a proposal. For the weights, we seek comment on whether 35/3 Mbps 5G-NR service should receive a weight equal to 1 and 7/1 Mbps 5G-NR service should receive a weight equal to .9 when calculating the weighted coverage percentage used to evaluate competing proposals.⁵³⁹

⁵³⁷ For example, suppose there is a duplicate support area with two providers and three supported hex-9s with the providers only overlapping in one of the hex-9s. Further suppose that provider A receives \$10 per hex-9 and provider B receives \$5 per hex-9 in the duplicate support area. Then the total budget for this duplicate support area under our proposal would be $\$10 + \$10 + \$5 = \$25$.

⁵³⁸ 47 CFR § 1.7004(c)(3)-(7); *see also BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3095, Appx. A § 3.1.5. Note that all 5G-NR speeds in this section assume an outdoor stationary environment.

⁵³⁹ If eligible services in ACF Mobile Phase II include 5/1 Mbps for 4G LTE or other services, we seek comment on whether these services should receive a lower weight. For example, an appropriate weight for 5/1 Mbps LTE under this weighting scheme may be .85 given the similarity in speeds offered between this service and 5G-NR at 7/1 Mbps.

215. For example, suppose that there are ten hex-9s in a tract with a total land area of approximately 1 square mile—eight eligible hex-9s and two ineligible hex-9s, one of which is served at 5G-NR at 7/1 Mbps minimum speed by an unsubsidized provider and one of which is a single support area.⁵⁴⁰ Suppose that two ETCs submit coverage maps for this tract and the first ETC proposes to serve 2 of the eligible hex-9s at 5G-NR 35/3 Mbps minimum speed service, and 3 of the eligible hex-9s at 5G-NR at 7/1 Mbps minimum speed service.⁵⁴¹ In this case, under the weighting scheme, the weighted coverage percentage for this offer would be approximately equal to 47%.⁵⁴² Further suppose that the second ETC proposes to serve 6 eligible hex-9s with 5G-NR at 7/1 Mbps minimum speed. The approximate score for this second proposal would be 54%,⁵⁴³ and therefore, this second ETC would be the winner of the budget assigned to this tract in the competitive mechanism.

216. *Minimum Acceptable Offers.* We also seek comment on the minimum acceptable weighted coverage percentage for an offer and whether it should be the weighted coverage percentage that would be implied by the current combined service areas of all the supported ETCs in the eligible hex-9s assuming 5G-NR 7/1 Mbps service in the hex-9s where such services are currently unavailable, and the actual 5G-NR deployed service in hex-9s where 5G-NR 7/1 Mbps or 35/3 Mbps services are deployed. For example, in the previous example, if two eligible hex-9s had 4G LTE 5/1 Mbps service, one had 5G-NR 7/1 Mbps and one had 5G-NR 35/3 Mbps, then the minimum acceptable coverage percentage for an offer would be approximately 37%.⁵⁴⁴ We seek comment on whether, if a provider submits an offer below the minimum coverage percentage or any other minimum criteria we establish, WTB should notify the provider and provide one opportunity for the provider to correct its bid. After this process, offers that remain below this minimum coverage percentage would be rejected. We seek comment on this approach.

217. *Tie Breaker.* Finally, in the event that more than one proposal should tie when calculating the highest weighted coverage percentage, we seek comment on what procedure should be used to break such a tie. Should the provider with the current highest weighted coverage percentage be awarded the support given that this provider has demonstrated a willingness and ability to serve the broader community with the most advanced mobile wireless services? Should the tie be broken at random? Should offers also include the lowest support amount below the available budget that the provider would be willing to accept in order to deploy the proposed service and, only in the case of ties for highest weighted coverage percentage, the provider with the lowest support amount would win and receive the support amount requested? To the extent a provider already receives support in the Alaska Connect Fund, should the Commission consider the progress carriers have made in their single-support areas as indicated in the December 31, 2029 progress reports?

218. We seek comment on these proposals for accepting and evaluating competing offers in order to resolve duplicate support. Should the scoring of offers include other criteria besides proposed

⁵⁴⁰ We note that in this example, the maximum weighted coverage percentage would be 80% due to .2 square miles out of the total 1 square mile being ineligible for support and therefore not considered in the calculation.

⁵⁴¹ We seek comment on whether a hex-9 should be considered served using the same methodology described above for determining whether a hex-9 is served by an unsubsidized provider. Specifically, a hex-9 will be counted as served under a coverage proposal if 70% of the eligible component hex-11 centroids that comprise the hex-9 are covered. *See supra* Sections III.D.2.c. (Determining Coverage Areas for Alaska Connect Fund), V.A. (Determining Support Amounts by Area).

⁵⁴² Given the approximate coverage area of each hex-9 and the total land area in the example duplicate support area of 1 square mile, each hex-9 represents .1 square miles. Therefore, the calculation is $100 * [(2 * 1 + 3 * .9) / 1] = 47\%$. The exact score assigned to this proposal would be slightly different due to the hex-9 coverage area approximation of one square mile used here to simplify the example.

⁵⁴³ This is calculated as $100 * [(6 * .9) / 1] = 54\%$.

⁵⁴⁴ Note that three hex-9s (or .3 sq mi) are weighted at (.9) and one hex-9 (or .1 sq mi) is weighted at 1. Therefore, this is calculated as $100 * [(3 * .9) + (.1 * 1)] = 37\%$.

geographic coverage and service levels? For example, should the number of covered BSLs and road miles be explicitly included in the scoring formula? Are the weights we seek comment on for the two service levels appropriate? Should more weight be given to 5G-NR 35/3 Mbps service? Should other service levels be considered? Should providers be allowed to submit multiple offers that include a minimum support amount the provider would be willing to accept to deploy the proposed service level of the offer, and if so, how should we trade off coverage and requested support when determining winners? Should the minimum coverage percentage in a census tract instead be set at the highest weighted coverage percentage of any single provider in the duplicate-support area under a minimum 5G-NR 7/1 Mbps service level assumption? Should we also impose a minimum acceptable criterion on offers that all areas that currently have service (e.g., a hex-9) would need to still have service under any proposal that we would accept as a valid proposal? Instead of only evaluating offers based on the eligible duplicate support and unserved areas within a tract, should we also include ineligible single support areas within the tract when calculating the score in order to ensure that service is maintained to these areas? We seek comment on these questions and on any modifications that should be made to the methodology for evaluating competing offers and determining winners.

219. *Support Phase-Down.* We seek comment on whether providers that are not chosen as the sole recipient of the duplicate-support amount within a tract should have their support phased down over two years. Specifically, we seek comment on whether losing providers should receive two-thirds of their support for the first twelve months following the announcement of winners, one-third of their support for the next twelve months, and zero support for the tract thereafter. We seek comment on this approach and any alternatives. Is a phase-down of support appropriate? Is two years a sufficient length of time for the phase-down?

D. Alternative Mechanism to Eliminate Duplicate Support

220. We also seek comment on an alternative mechanism that would assign support to only a single provider if an eligible area is covered by two or more Alaska Plan mobile provider participants. At a high level, this approach would take into consideration the existing coverage of each supported provider within a potentially larger area that includes the duplicate-support area—balancing various factors—and award support for the duplicate-support area to the provider that demonstrates the “best” coverage. Unlike the competitive mechanism, this approach would look at past service deployments rather than evaluating offers for future service deployments. For a currently supported provider that is not selected to continue receiving support for an area under the alternative mechanism, we would make available an option to negotiate a revised plan with WTB that would allow it to continue to receive the same or similar level of support in exchange for serving different, but comparable, currently unserved areas. We seek comment on various aspects of this approach.

221. *Evaluation Areas.* In the *Report and Order*, we define duplicate-support areas as eligible areas covered by two or more Alaska Plan participants. For this alternative mechanism, we seek comment on criteria for deeming a potentially larger and more standardized area as the basis for evaluating the service provided by each of multiple supported carriers and selecting a single carrier to receive support for the eligible duplicate-support hex-9s within that area. Specifically, we would consider a census tract as the evaluation area, and we seek comment on whether census tracts would be large enough to provide sufficient scale for the selected provider but not so large as to create overlaps with areas where other providers may be receiving duplicate support. Would census blocks be a more reasonable size as evaluation areas? Alternatively, should the evaluation area be constructed based on the particular duplicate support situation, such as an aggregation of smaller adjacent census geographies, such as blocks? We seek comment on these options and generally on the criteria to be considered when determining an evaluation area that includes the hex-9s deemed to have duplicate support and the adjacent coverage areas of the supported providers.

222. *Evaluating Mobile Technology.* We also seek comment on how to evaluate a subsidized provider’s service in a covered hex-9 with respect to mobile technology. For example, should we differentiate among four categories of service in a hex-9: 2G and 3G service; 4G-LTE; 5G-NR at 7/1

Mbps; and 5G-NR at 35/3 Mbps or better? If the component hex-11s in a hex-9 indicate service of different mobile technologies, should we deem the hex-9 as covered by the most frequently indicated technology in the covered hex-11s, or in the case of an equal split between mobile technologies, of the more advanced technology offered by the provider? Should we instead not differentiate between mobile technologies in evaluating coverage, and consider an area either served or not? Alternatively, should we differentiate among fewer than four mobile technologies, and if so, what should they be? Should we use a different method to assign a technology to a hex-9 when the component hex-11s show different mobile technologies?

223. We seek comment on whether and, if so, how to weight differently the hex-9s in an evaluation area that are deemed to show coverage by different technologies. For example, if half of the hex-9s in a provider's footprint in an area show coverage at 3G speeds, and the other half receive 4G LTE service, should we weight the 4G-LTE areas more heavily when evaluating the overall coverage of a supported provider? For this purpose, we suggest weighting 2G and 3G service as .75, 4G LTE service at 1, 5G-NR at 7/1 Mbps at 1.15; and 5G-NR at 35/3 Mbps and higher speeds of service at 1.25. These weights would essentially use 4G LTE service as a benchmark, with slower service carrying less weight while faster service would count more heavily in the evaluation of a provider's existing coverage. If commenters disagree with this approach or with the suggested weights, we ask that they suggest a different approach or different weights and explain why they believe their alternative approach is preferable. As an additional weight, should we evaluate progress of upgraded deployments demonstrated in the December 31, 2029 progress reports for single-support areas, and if so, how should we do so?

224. *Superior Coverage Calculation.* In order to compare two or more supported providers that serve an area, this approach—on which we seek comment—would consider their technology-weighted service performance and the geographic extent of their footprint. We would, for each provider, to determine an area-specific score calculated as the sum of the weighted hex-9s that they serve. As a simple example, a provider that serves 1000 hex-9s in an evaluation area at 3G speeds would have a score of $1000 \times .75$, or 750. Another provider that serves 800 hex-9s in the evaluation area with 4G-LTE would have a score of 800. We suggest these two criteria—coverage within the geographic evaluation area and technology—because they provide for a simple, measurable, and transparent method for comparing coverage that captures essential components of a provider's service offering. How should we select a single provider if two or more providers cover 100% of the evaluation area at the same technology, or otherwise have a tied score? Should the Commission then look to a broader area to evaluate the providers' coverage, such as the census block group, census tract level, or an alternate geographic area?

225. We are mindful, however, that there are other aspects of a supported provider's performance that also matter to consumers. Should other factors, such as price or reliability, be considered in a supported provider's score? Would it be feasible to find standardized, measurable, and transparent ways to incorporate these or other factors? Would consideration of any such factors contribute significantly to the fairness of the comparison across duplicate supported providers? Will the requirements in ACF Mobile Phase I serve to ensure that a provider receiving support as of the start of ACF Mobile Phase II already meets basic price and/or reliability (or other) criteria, mitigating any need to incorporate the criteria explicitly into the scoring approach? We seek comment on these aspects of the approach.

226. Under this approach, the provider with the highest score in the evaluation area would be selected to continue to receive support for the previously duplicate support area. We would calculate the support amount as set forth above, where generally support for a provider would be based on the support rate of the provider with the smaller footprint.⁵⁴⁵ Under this approach, the single winner of support for hex-9s that it and another provider both previously covered would receive a support amount based on the number of previous duplicate support hex-9s in the evaluation area. Its support amount for areas within

⁵⁴⁵ See *supra* Section V.A. (Determining Support Amounts by Area).

the evaluation area for which it was a single-supported provider—for which it has guaranteed support through December 31, 2034—would not be affected. That is, the winning provider would receive support at a new rate for the previous duplicate support areas and continue to receive support at its existing rate for any hex-9s for which it has been receiving support as a single provider.

227. *Alternative Evaluation Criteria.* Rather than evaluate a provider's current performance based on the extent of coverage within the geographic evaluation area and the technology and speed that it offers, we seek comment on alternative means of evaluation that would select a single supported provider based solely on which of the duplicate support recipients offers service to the largest number of hex-9s within the evaluation area. We seek comment on this and other possible approaches that are consistent with the actions of the Order.

228. *Performance Requirements.* Once selected as the winning provider for the evaluation area, we would require that the provider meet the minimum standard of deployment for support under ACF Mobile Phase II of 5G-NR 7/1 Mbps measured in an outdoor stationary environment.⁵⁴⁶

229. *Loss of Support.* Under this approach, on which we seek comment, providers that lose their support in a duplicate-support area would be subject to phase down of support. Providers would lose support subject to a phase down schedule of 2/3 support for the first twelve months, 1/3 support for the next twelve months, and zero support thereafter. In the alternative, we seek comment on allowing providers that lose duplicate support to deploy to comparable unserved hex-9s in other areas of Alaska. Under this approach, providers that have their performance plans approved by providing comparable service to hex-9s in an uncovered location would have their lost support resume from the date that the performance plan is approved. We seek comment on this approach. Should there be any differences in the loss of support approach depending on how the provider loses support between the competitive and alternative mechanism?

E. Mobile Support for Unserved Areas

230. In the *Alaska Plan Order*, the Commission reallocated funds going to support the provision of mobile service in unserved remote areas in Alaska and decided to distribute those reallocated funds through a reverse auction process.⁵⁴⁷ In that *Order*, unserved areas were defined as “those census blocks where less than 15% of the population within the census block was within any mobile carrier’s coverage area.”⁵⁴⁸ By December 31, 2026, that allocation will amount to \$162 million.⁵⁴⁹ The Commission provided that support for unserved areas would be distributed through a reverse auction process, subject to the competitive bidding rules codified at Part 1 Subpart AA of the Commission’s rules.⁵⁵⁰ The *Alaska Plan Order* stated that “[a]ny competitive ETC, including competitive ETCs that do not otherwise receive support for mobile service in remote Alaska, may bid in the auction to receive annual support through the remainder of the Plan term to extend service to areas that do not have commercial mobile radio service as of December 31, 2014.”⁵⁵¹ We wish to refresh the record on this approach and update the definition of unserved areas. We seek comment on a potential auction mechanism for assigning support to provide service in areas that are currently unserved by any provider. We first address several high-level program elements and then describe a reverse auction mechanism, which would use competitive bidding to determine how best to apportion the available budget to

⁵⁴⁶ This is consistent with our general proposal that, for ACF Mobile Phase II, 5G-NR 7/1 Mbps is the minimum standard of deployment. See *supra* Section V.B. (ACF Mobile Phase II Service Requirements).

⁵⁴⁷ *Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106.

⁵⁴⁸ *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

⁵⁴⁹ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10013, para. 65 & n.203.

⁵⁵⁰ *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

⁵⁵¹ *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

maximize new service to Alaskans in places where they live, work, and travel that have heretofore been ignored. The auction mechanism on which we seek comment would leverage competition across areas to determine the areas that will receive support through the auction and, in areas where more than one bidder is competing, the auction would additionally leverage competition between bidders to determine a single winner of support.

1. Eligible Bidders

231. We seek comment on continuing with the prior decision to open up the unserved areas auction to any competitive ETC certified in Alaska at the commencement of the auction, including competitive ETCs that do not already receive support for mobile service in remote Alaska.⁵⁵² We suggest this broad eligibility requirement in order to attract a wide pool of potential service providers, recognizing that the technical and business approaches consistent with providing service to areas that have remained unserved may require expertise and technology different than that of the carriers that traditionally have provided service in Alaska. In addition, the potential availability of new middle-mile capacity may make it feasible for new entities to enter the market in these (and potentially other) eligible areas.

2. Term of Support and Public Interest Obligations

232. We seek comment on a term of support of eight years, which is the same period of time that mobile providers will receive support in single-support areas. This will allow time for mobile-support recipients to buildout and maintain a communications network for remote communities and reassess any ongoing support needs to these areas. After that eight-year period, the Commission would reassess any ongoing support needs.

233. We also seek comment on the public-interest obligations that a winning bidder will have in exchange for receiving Alaska Connect Fund support for serving a previously unserved area. For example, we would require the winning provider to offer 5G-NR service at 7/1 Mbps⁵⁵³ to at least 85% of the eligible unserved hex-9s in the area by December 31, 2034.⁵⁵⁴ We seek comment on these standards with respect to technology and speed, geographic coverage, and timing. Should we instead establish performance obligations in stages, for example, requiring less geographic coverage at a 2- or 3-year benchmark, more coverage at 5 years, with full coverage required by year 6, or other staged requirements? Should we require a greater or lower technology and speed, or allow a mix of such? Should obligations vary according to the type of service to be provided, such as requiring greater coverage if provided by satellite, or less coverage depending upon access to middle-mile?

3. Identifying Areas Eligible for Support and Bidding

234. The *Alaska Plan Order* defined an unserved area as “[a] census block[] where less than 15% of the population within the census block was within any mobile carrier’s coverage area,” as of December 31, 2014.⁵⁵⁵ We find this definition to be out of date. We seek comment on an alternative approach whereby we would first determine an area’s eligibility at the hex-9 level, rather than at the census-block level, consistent with the Order, above, regarding areas receiving support.⁵⁵⁶ In order to determine that a hex-9 is unserved for purposes of the auction, BDC data would have to indicate that no carrier provides mobile data service as shown at the centroids of 70% of the component hex-11s that

⁵⁵² See 47 U.S.C. § 214(e); *Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106.

⁵⁵³ This is consistent with our general proposal that, for ACF Mobile Phase II, 5G-NR service at 7/1 Mbps is the minimum standard of deployment. See *supra* Section V.B. (ACF Mobile Phase II Service Requirements).

⁵⁵⁴ We agree with the Commission in the 5G Fund proceeding that a 100% coverage requirement may make some areas cost-prohibitive to serve and that an 85% coverage requirement is more realistic. *5G Fund Second Report and Order* at 54-55, para 106.

⁵⁵⁵ *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

⁵⁵⁶ See *supra* Section III.D.2.c. (Determining Coverage Areas for Alaska Connect Fund).

comprise the hex-9. We would also determine whether an area includes at least one BSL (as defined by the Fabric) for the hex-9. If a hex-9 is deemed uncovered, contains at least one BSL and is otherwise eligible for Alaska Connect Fund support, then the hex-9 would be deemed unserved.

235. However, because hex-9s are very small relative to the size of mobile deployment areas, we intend that participants in a reverse auction would bid at the level of a larger geographic area, such as a census block, census block group, or census tract. For the larger geographic area to be considered unserved, we would require that 85% of the eligible hex-9s in the larger geographic area be deemed unserved. We seek comment on the use of census block, census block group, or census tract as the biddable area for the auction. Is there another well-defined geographic area that would be more appropriate for an auction to assign support to currently unserved areas in Alaska? Would a larger hexagonal area in the H3 system, such as a hex-5 (approximately 253 sq. kms) or hex-6 (approximately 36 sq. kms.) be preferred? Biddable areas based on a larger H3 system hexagon would be of a more uniform size than census tracts or blocks. Would potential bidders consider that an advantage? Is it important that the geographic areas used in this reverse auction be the same as those used for any support mechanism for areas that are currently served by at least one subsidized provider? Are there any classes of hex-9s without at least one BSL that should be considered eligible for support if uncovered?

236. Second, we seek comment on whether there is a minimum speed or technology level above which a hex-9 would be deemed served. In the *5G Fund Second Report and Order*, an area is eligible if there is not an unsubsidized 5G provider of 7/1 Mbps service in an outdoor stationary environment; however, the *5G Fund Second Report and Order*'s goal is to bring 5G to areas without 5G, instead of bringing 5G to unserved areas.⁵⁵⁷ Given that the Alaska Plan's goal was to get to 4G LTE, we think a number of otherwise served areas will be defined as unserved if we use the threshold from the *5G Fund Second Report and Order*. Rather, we suggest that eligible areas with no service, not even voice service, will be deemed unserved for the unserved areas auction in Alaska. We seek comment on the speed and technology threshold that, if unavailable, should be considered for an area to be deemed unserved.

237. Are there other approaches to determining eligible areas and biddable areas for the reverse auction that would allow for an accurate, transparent, and careful evaluation of an area's suitability to be considered for support through a reverse auction? Should we consider criteria other than those we have laid out to determine whether an area is considered eligible for the unserved areas auction? More specifically, are there alternatives to certain elements of the means of defining eligible unserved areas that would be preferable?

4. Budget

238. In the *Alaska Plan Order*, the Commission reallocated funds for use in an auction for support to unserved areas.⁵⁵⁸ By December 31, 2026 that allocation will amount to approximately \$162 million. We seek comment on whether this amount should be the maximum amount of support that can be assigned in the reverse auction. The reverse auction format that we set forth would assign support so as to maximize the additional coverage that can be supported with the budget. We seek comment on whether this amount will achieve the intended purpose. If commenters contend that additional support is needed, we seek comment on that amount and if there is support going to mobile wireless in Alaska that can be reallocated for unserved areas.

5. A Multi-Round, Descending Clock Auction

239. In the *Alaska Plan Order*, the Commission stated that the reverse auction will be subject

⁵⁵⁷ *5G Fund Second Report and Order* at 9-11, paras. 13-15.

⁵⁵⁸ *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 106.

to the competitive bidding rules codified at Part 1 Subpart AA of the Commission's rules.⁵⁵⁹ Consistent with this, under the competitive bidding approach, we would use a multi-round, descending clock (reverse) auction to identify the areas that would receive support, the providers that would receive support and the amount of support that each winning bidder would be eligible to receive. The descending clock auction would consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round. We would use a reverse auction format similar to that used for the Rural Digital Opportunity Fund and the CAF Phase II auctions.⁵⁶⁰

240. *Bidding and Support Metric.* Under this approach, bids in the reverse auction would be accepted and winning bids would be determined based on a price per eligible hex-9. Accordingly, the price clock would be denominated in terms of dollars per eligible hex-9. Each biddable area would be associated with a number of eligible hex-9s, and support amounts would be determined by multiplying the number of eligible hex-9s in the area by the relevant price per hex-9. The opening clock price times the number of eligible hex-9s in a biddable area would indicate the highest support amount that a bidder could receive for the area. The same clock price would apply to all eligible areas.

241. We also seek comment on whether an alternative bidding and support metric, such as the number of BSLs in the eligible hex-9s in the biddable area, would be preferable to using the number of eligible hex-9s in the area. Under this approach, we would use the number of hex-9s because hex-9s are a standard unit of area coverage (equal to .105 square kilometers) and are small enough to enable a granular evaluation of whether there are locations—indications that mobile coverage would be used—in the area. Moreover, using the number of hex-9s in a biddable area as a metric is consistent with the approach we adopt today for ACF Mobile Phase I and also seek comment on for other elements of the Alaska Connect Fund.

242. *Accepting Bids and Identifying Winning Bids.* In the initial round of the auction mechanism, each bidder would indicate the biddable areas to which it is willing to provide service meeting the specified performance requirements in exchange for a support amount implied by the opening clock price. In each subsequent bidding round, the price clock would be decremented and each bidder would indicate the areas to which it is willing to provide service at the lower implied support amount.

243. Under this reverse auction mechanism on which we seek comment, after every bidding round, the bidding system would calculate the total requested implied support for the areas that have bids at the current clock price (counting each area with a bid only once). If this amount is greater than the budget, then the price clock would be decremented again, and another bidding round would follow. After the first bidding round in which the total requested support is equal to or less than the budget—that is, the budget “clearing round”—the bidding system would begin to assign support using a “second-price rule.”⁵⁶¹ A second-price rule would ensure that each winning bidder receives a support amount for an area that is at least as great as the support amount implied by its bid price. Bidding would continue with a new bidding round at a decremented clock price for areas that receive more than one bid at the clock price in the clearing round, since at least two bidders are still competing for support to that area. Such rounds would continue until, for each such area, there is at most one bid at the clock price. The lowest bid for the area would be the winning bid, and support amounts again would be determined using a second-price rule.

⁵⁵⁹ *Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

⁵⁶⁰ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, 33 FCC Rcd 1428, 1431 (2018); *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020; Notice and Filing Requirements and Other Procedures For Auction 904*, 35 FCC Rcd 6077 (2020).

⁵⁶¹ Under a second-price rule, a winning bidder pays a price that is just sufficient to ensure its winning status. In a reverse auction for a single item, the rule simplifies so that the lowest bidder wins, but receives support in the amount bid by the second lowest bidder.

244. We seek comment on this general approach to a multiple-round, descending clock auction to assign support to areas in Alaska that are currently deemed unserved. If we move forward with this approach, as is the typical procedure for Commission auctions, we would delegate authority to WTB and OEA to release a further Public Notice specifying in more detail the proposed rules and procedures of an auction mechanism that follows the general format we set forth here. At that point, we would seek comment on the specific elements of the reverse auction. After taking into account the submitted comments, we would release another Public Notice that lays out the specific rules and procedures to be used in the auction and announces the availability of bidder education materials.

245. We note that the reverse auction could establish a level of support for unserved eligible areas through competition among bidders based on their assessment of the costs to deploy mobile service in these areas. Could the results of this reverse auction to assign support to unserved areas in Alaska help the Commission consider a more appropriate level of support for participants already serving existing areas in Alaska (single support areas or duplicative support areas), given that this support was initially established based on frozen costs of wireline deployment?

246. *Noncompetitive Alternative.* Is there a reason to deviate from this reverse auction approach? Are there considerations that would argue in favor of another approach, and if so, what are they and how would they affect the determinations of eligible areas?

F. Retail Consumer Conditions For All Mobile Alaska Connect Fund Recipients

247. *Retail Consumer Subscribership.* In the Alaska Plan, we have found instances where some mobile provider participants had very few customers, and in one example, a provider claimed to have only one mobile data subscriber. In such instances, we are concerned that the Commission has been providing support in areas where subscribers are not subscribing to the services.

248. We seek comment on whether we should require that all Alaska Connect Fund mobile providers receiving support must have a minimum of five mobile data subscribers per census designated place and be able to provide proof of those subscribers upon request by WTB, starting with the due date of the first milestone. For this purpose, each subscriber would be one person, not directly employed by the provider, paying the publicly advertised rate for the mobile data service. Providers unable to provide address-level data of these subscribers upon demand after December 31, 2029, may have a proportional amount of support withheld as not having effective service in the area. Providers may not take more than 14 days to satisfy any subscribership requests by WTB. Census designated places with fewer than 20 people, based on most recent census estimates, are exempt from this requirement. We seek comment on this proposal. Would this approach help guard against waste, fraud, and abuse in the mobile portion of the Alaska Connect Fund? Would, and if so, how would this approach materially affect the goal to ensure that mobile providers are covering where Alaskans travel? How much of the census designated place would need to be covered before such a condition would be applicable?

G. Open RAN For All Mobile Alaska Connect Fund Recipients

249. In the *Alaska Connect Fund Notice*, the Commission sought comment on whether we should use the Alaska Connect Fund to encourage the deployment of Open RAN in mobile networks, and if so how.⁵⁶² The Commission has previously noted that networks deploying Open RAN “have the potential to address national security and other concerns that the Commission and other federal stakeholders have raised in recent years about network integrity and supply chain reliability.”⁵⁶³ In its

⁵⁶² *Alaska Connect Fund Notice*, 38 FCC Rcd at 10039-40, para. 128.

⁵⁶³ *Promoting the Deployment of 5G Open Radio Access Networks*, GN Docket No. 21-63, Notice of Inquiry, 36 FCC Rcd 5947, 5949, para. 4 (2021) (*Open RAN NOI*); see also *5G Fund Further Notice*, 38 FCC Rcd at 8936, para. 53 n.110 (Sept. 22, 2023) (“Open RAN is a term that describes a general disaggregation of RAN functionality built using open interface specifications between elements instead of proprietary specifications. Open RAN can be

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comments, ATA, the only commenter on this issue, argued that the Commission should avoid any mandates and that providers should have flexibility in deploying such network technologies in Alaska.⁵⁶⁴ The Commission has since concluded that it is in the public interest and serves national priorities to use universal service funds to incentivize the voluntary inclusion of Open RAN in mobile networks deployed with 5G Fund support.⁵⁶⁵ In the *5G Fund Second Report and Order*, the Commission, recognizing the significant public interest benefits of Open RAN networks, and to encourage the voluntary inclusion of Open RAN in networks that are deployed with 5G Fund support, offered 5G Fund support recipients additional support and an extension of time to deploy networks with Open RAN technologies.⁵⁶⁶ We seek comment on whether we should consider similar incentives for Alaska Connect Fund recipients deploying 5G networks. Based on what we have adopted today for single-support areas and duplicate-support areas under ACF Mobile Phase I and are proposing to adopt for ACF Mobile Phase II, should we adopt similar incentives to provide additional funding and extension of build-out obligations for providers that voluntarily agree to deploy Open RAN in Alaska for all Alaska Connect Fund mobile provider recipients?

H. Tribal Consent For Both Fixed and Mobile Alaska Connect Fund Recipients

250. In this Further Notice of Proposed Rulemaking, we seek comment on whether Alaska Connect Fund providers of mobile or fixed service must obtain the consent of the relevant Tribal government(s) for new deployments, prior to being authorized to receive support for those areas. The Tribal consent requirement is exclusively predicated on a government-to-government relationship, based on the Tribes recognized from the Tribe Act of 1994.⁵⁶⁷ To promote and support Tribal sovereignty and self-determination,⁵⁶⁸ we tentatively conclude that adopting a Tribal consent requirement in Alaska Connect Fund rules is consistent with our long-standing recognition that engagement between Tribal governments and communications providers, and we recognize particularly that early engagement is an important element to promote the successful deployment and provision of service on Tribal lands.⁵⁶⁹ We seek comment generally on this tentative conclusion and how it may be implemented.

251. In the *Alaska Connect Fund Notice*, the Commission reiterated its commitment to working with Tribes and Tribal leaders, and sought comment on considerations with respect to participation in the Alaska Connect Fund by Indian Tribes,⁵⁷⁰ Tribal governments,⁵⁷¹ and residents on

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implemented in vendor-neutral hardware and software-defined technology based on open interfaces and community-developed standards providing a flexible and interoperable deployment architecture across multiple vendors.”).

⁵⁶⁴ ATA Comments at 34.

⁵⁶⁵ *5G Fund Second Report and Order* at 70-71, paras. 137-39.

⁵⁶⁶ *5G Fund Second Report and Order* at 70-77, paras. 137-53.

⁵⁶⁷ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4081 (2000) (*Policy Statement*), <https://docs.fcc.gov/public/attachments/FCC-00-207A1.pdf> (citing Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (1994), <https://www.govinfo.gov/content/pkg/COMPS-1398/pdf/COMPS-1398.pdf>).

⁵⁶⁸ *See Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*, Exec. Order No. 14112, 88 Fed. Reg. 86021 (2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/06/executive-order-on-reforming-federal-funding-and-support-for-tribal-nations-to-better-embrace-our-trust-responsibilities-and-promote-the-next-era-of-tribal-self-determination/>.

⁵⁶⁹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, paras. 636-37; *see also Enhanced A-CAM Order*, 38 FCC Rcd at 7084, para. 105.

⁵⁷⁰ The term “Indian Tribe” is defined in the *Policy Statement* to mean “any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.” *Policy Statement*, 16 FCC Rcd at 4080. The Commission’s precedent relies on the

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Tribal lands.⁵⁷² In recognition of the fact that engagement between Tribal nations and service providers “is vitally important to the successful deployment and provision of service,”⁵⁷³ the Commission has reaffirmed the importance of its obligation that all high-cost recipients serving Tribal lands demonstrate annually that they have meaningfully engaged with Tribal governments in their supported areas.⁵⁷⁴ Several commenters support additional Tribal consultation and Tribal engagement,⁵⁷⁵ and others argue the Commission should require Alaska high-cost recipients to obtain written authorizing resolutions from a Tribal government or Tribal entity under the Alaska Native Claims Settlement Act of 1971 (ANCSA) prior to receiving support for projects proposed to be built on Tribal lands.⁵⁷⁶

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Federally Recognized Indian Tribe List Act of 1994, which requires the Secretary of the Interior to publish in the Federal Register an annual list of all “Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (1994), <https://www.govinfo.gov/content/pkg/COMPS-1398/pdf/COMPS-1398.pdf>; see also Department of the Interior, *Tribes Served*, <https://www.doi.gov/ost/tribes-served> (last visited Sept. 9, 2024). From this list, the Department of Interior recognizes 227 Alaskan Native Villages and the Metlakatla-Annette Island Indian Reservation. Department of the Interior, Indian Affairs, *Tribes Served by the Alaska Region*, <https://www.bia.gov/regional-offices/alaska/tribes-served> (last visited Sept. 9, 2024); Department of the Interior, Indian Affairs, *Tribes Served by the Alaska Region, Listing of All Alaska Native Villages*, <https://arcg.is/0mSLLS> (last visited Sept. 9, 2024).

⁵⁷¹ Consistent with the Federally Recognized Indian Tribe List Act of 1994 (Tribe Act of 1994), the Commission’s precedent uses the term “Tribal Government” to mean “the recognized government of an Indian Tribe that has been determined eligible to receive services from the Department of the Interior, Bureau of Indian Affairs.” *Policy Statement*, 16 FCC Rcd at 4080 (2000).

⁵⁷² *Alaska Connect Fund Notice*, 38 FCC Rcd at 10009-10, paras. 58-60, 126 (citing *Policy Statement*, 16 FCC Rcd at 4079-80).

⁵⁷³ *Alaska Connect Fund Notice*, 38 FCC Rcd at 10009, para. 60 (quoting *USF/ICC Transformation Order*, 26 FCC Rcd at 17868, para. 637).

⁵⁷⁴ 47 CFR § 54.313(a)(5). Section 54.313(a)(5) provides that to the extent that a high-cost support recipient serves Tribal lands, it must provide the following:

[D]ocuments or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

- (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- (ii) Feasibility and sustainability planning;
- (iii) Marketing services in a culturally sensitive manner;
- (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- (v) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

Id.

⁵⁷⁵ See NNTA Comments at 2, 6-7; David Bryan Comments; NANA Reply at 8; Quintillion Comments at 6-8; TAC Comments at 2; ABA May 16, 2024 *Ex Parte* at 1.

⁵⁷⁶ NANA Reply at 9; Quintillion Comments at 7-8.

252. In the recent *5G Fund Second Report and Order and Second Further Notice*, the Commission explored the idea of requiring a winning bidder in the 5G Fund Phase I auction to demonstrate during the long-form application process, and prior to being authorized to receive support, that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s).⁵⁷⁷ The Commission tentatively concluded that adopting a Tribal consent requirement in its 5G Fund rules is consistent with its long-standing recognition that engagement between Tribal governments and communications providers, particularly early engagement, is an important element to promote the successful deployment and provision of service on Tribal lands.⁵⁷⁸ The Commission envisioned a Tribal consent requirement for the 5G Fund as a continuation of its commitment to ensuring Tribal engagement by service providers that receive high-cost universal service support and in furtherance of the Commission's *Policy Statement* establishing a government-to-government relationship with Tribes.⁵⁷⁹ Additionally, in the *5G Fund Second Report and Order and Second Further Notice*, the Commission looked to the Tribal consent requirements of its Tribal Lands Bidding Credit (TLBC) as a guide and discussed including a requirement that applicants for 5G Fund support to provide service on Tribal lands submit a certification from the Tribal government(s) that it has granted any required consent.⁵⁸⁰

253. We tentatively conclude that the Commission should require Tribal consent for deployment of new facilities for mobile providers participating in the Alaska Connect Fund and any new deployments that may be authorized under Fixed ACF and seek comment on how we could implement this requirement. We seek comment on what we should consider as deployment of new facilities for Tribal consent purposes. Should the Commission use any of the existing high-cost universal service Tribal engagement requirements to develop the criteria necessary to evidence Tribal consent in order to provide more consistency and predictability for both Tribal governments and service providers? We seek comment on any other consent requirements that will help provide equitable provision of Alaska Connect Fund support for mobile and fixed broadband service using new facilities located on Tribal lands and that would benefit Tribal communities in Alaska.

254. In the *Alaska Connect Fund Report and Order*, *supra*, we reminded recipients of high-cost support serving Tribal Lands that they are required to have annual discussions with Tribal governments that include feasibility and sustainability planning and compliance with applicable Tribal requirements.⁵⁸¹ We seek comment on whether the Commission should consider additional or different Tribal engagement requirements under section 54.313(a)(5) of the Commission's rules⁵⁸² for Alaska Connect Fund fixed and mobile support recipients.⁵⁸³

255. We seek comment on how compliance with a Tribal consent requirement may be demonstrated and verified by the Commission. In the *5G Fund Second Report Order and Second Further*

⁵⁷⁷ *5G Fund Second Report Order and Second Further Notice* at 82, para. 164.

⁵⁷⁸ *5G Fund Second Report Order and Second Further Notice* at 82-83, para. 164.

⁵⁷⁹ *5G Fund Second Report Order and Second Further Notice* at 83, para. 166.

⁵⁸⁰ *5G Fund Second Report Order and Second Further Notice* at 85-86, para. 170; see 47 CFR § 1.2110(f)(3)(ii)(A).

⁵⁸¹ See *supra* Section III.C.4. (Tribal Nations and Tribal Lands in Alaska).

⁵⁸² 47 CFR § 54.313(a)(5).

⁵⁸³ Other federal broadband support programs have their own versions of Tribal consent. See, e.g., BEAD NOFO at 48 n.70, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>. NTIA, BEAD Program—Waiver of Subpoint (E) of the Definition of Tribal Lands (Mar. 7, 2024), https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD_Program_-_Waiver_of_Subpoint_E_of_the_Definition_of_Tribal_Lands. Are there rules that have been particularly successful or unsuccessful for broadband deployment that should or should not be applied to the Alaska Connect Fund's Tribal Consent process?

Notice, the Commission also sought comment on whether it should include parameters similar to the those that the Commission includes for a winning bidder that is applying for a Tribal Land Bidding Credit (TLBC) to demonstrate its compliance with any Tribal consent requirement, including a requirement for submission of a certification from the Tribal government(s) that it has granted any required Tribal consent.⁵⁸⁴ Such a required certification of Tribal consent could include: the signature of an official of the Tribal Government and their title; a statement that the Tribal government has not and will not enter into an exclusive contract with the applicant to preclude entry by other carriers and will not unreasonably discriminate among wireless carriers seeking to provide service on the eligible Tribal land; and a statement that the Tribal government will, as applicable, permit the applicant to locate and deploy facilities on the Tribal land consistent with Alaska Connect Fund public interest obligations and performance requirements.⁵⁸⁵ Would using the TLBC certification model adequately reflect the contours of Tribal government consent in this context? Under this model, once the certifications from the applicant and the consent of the Tribal government(s) being served are received and reviewed by the Commission and determined to be consistent with the Alaska Connect Fund rules, support may be authorized. What adjustments to this model should be made if it is used? Should a process such as the TLBC certification process be adopted, we seek comment on how we might be able to incorporate flexibility in such a process.

256. If we do adopt a Tribal consent requirement, when should that consent be obtained for the purposes of the Alaska Connect Fund? How would the Commission's requirement be impacted by the BEAD requirement?⁵⁸⁶ Would we need to adopt a specific Tribal consent dispute resolution process? How could we assist in the Tribal consent dispute resolution process? Did any issues arise with respect to Tribal engagement or access to Tribal lands for deployments during the course of the Alaska Plan that can be improved upon? Given Tribal sovereignty, how should we address circumstances in which a Tribal government neither declines nor provides consent? What are the costs and burdens of such requirements to providers? Should different requirements be made for mobile support in Alaska versus fixed support?

257. In terms of who must provide consent, we recognize that the question of Tribal land management and sovereignty in Alaska is unique in many respects. All of Alaska is considered Tribal land for purposes of the universal service fund programs.⁵⁸⁷ Unlike the lower 48 states, Alaska's Tribal lands are not held and managed by the Bureau of Indian Affairs. Rather, its Tribal lands are held and managed by Alaska Native Regional Corporations. Twelve years after Alaska was granted statehood in 1959, the Alaska Native Claims Settlement Act of 1971 (ANCSA) was passed into law.⁵⁸⁸ ANCSA sought to address the "immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska."⁵⁸⁹ ANCSA did this by extinguishing all "aboriginal titles"⁵⁹⁰ and divided Alaska into

⁵⁸⁴ *5G Fund Second Report Order and Second Further Notice* at 85, paras. 169-70; *see* 47 CFR § 1.2110(f)(3)(ii)(A).

⁵⁸⁵ *See 5G Fund Second Report Order and Second Further Notice* at 85, para. 170; *see also* 47 CFR § 1.2110(f)(3)(ii)(A).

⁵⁸⁶ *See* October ABO Draft NOFO at 19-20 (requiring proof of consent from tribal entities).

⁵⁸⁷ 47 CFR § 54.5 ("Tribal lands. For the purposes of high-cost support, 'Tribal lands' include any federally recognized Indian tribe's reservation, pueblo or colony, including . . . Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) . . ."); Universal Service Administrative Co., *Lifeline Support, Tribal Benefit, Eligible Tribal Lands for the Lifeline Program*, https://www.lifelinesupport.org/wp-content/uploads/documents/get-lifeline/fcc_tribal_lands_map.pdf (last visited Sept. 9, 2024).

⁵⁸⁸ Alaska Native Claims Settlement Act of 1971, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. § 1601 *et seq.*).

⁵⁸⁹ Alaska Native Claims Settlement Act § 2 (codified at 43 U.S.C. § 1601).

⁵⁹⁰ Alaska Native Claims Settlement Act § 4 (codified at 43 U.S.C. § 1603).

twelve distinct regions⁵⁹¹ and for-profit corporations. Each Native Alaskan was enrolled in one of the corporations; enrollment was determined in a tiered manner using the Native's region of residency as of 1970, region of birth, or region of ancestor birth;⁵⁹² and through this enrollment the Native Alaskan was listed as a shareholder of a corporation.⁵⁹³ In other words, much of the land claims of the Alaska Native Villages are managed by the for-profit Alaska corporations, whose shareholders are often comprised by many different federally recognized Tribes.⁵⁹⁴ Deployment of advanced communications services provided by the Alaska Connect Fund will cross and cover these lands, as they did in the Alaska Plan.

258. Given these unique aspects of Tribal land management in Alaska, we tentatively conclude that an Alaska Connect Fund recipient seeking to deploy new facilities on Tribal lands⁵⁹⁵ must obtain consent from the appropriate Tribal entity. Is the appropriate Tribal entity the relevant Alaska Native Village(s) recognized by the Bureau of Indian Affairs?⁵⁹⁶ We note that federally recognized Tribes have a government-to-government relationship with the United States and are eligible to receive certain protections, services, and benefits by virtue of their federally recognized status.⁵⁹⁷ While the Commission's rules with respect to Tribal eligibility in various contexts vary somewhat, they universally limit eligibility to those Tribes that are "federally-recognized."⁵⁹⁸ We also seek comment regarding the role of the Alaska Native Corporations as they relate to Tribal consent requirements of the Commission.

259. In addition, we seek comment on how to address the fact that many Alaska Native Villages do not have defined boundaries but are assigned into Alaska Native Village Statistical Areas

⁵⁹¹ Alaska Native Claims Settlement Act § 7 (codified at 43 U.S.C. § 1606).

⁵⁹² Alaska Native Claims Settlement Act § 5 (codified at 43 U.S.C. § 1604).

⁵⁹³ Alaska Native Claims Settlement Act § 7 (codified at 43 U.S.C. § 1606). Except as otherwise specified, Settlement Common Stock cannot be sold or pledged. 43 U.S.C. § 1606(h)(B).

⁵⁹⁴ See ANCSA Regional Association, *The Twelve Regions*, <https://ancsaregional.com/the-twelve-regions/> (last visited Sept. 9, 2024) (listing the regions, the corporation for those regions, and the number of federally recognized Tribes per region).

⁵⁹⁵ See, e.g., 47 CFR § 54.5 (definition of Tribal Lands); *id.* § 73.7000 (definition of tribe); *id.* § 1.2110(f)(3)(i) (definition of Qualifying tribal land).

⁵⁹⁶ The list of federally recognized Tribes and Alaska Native entities is maintained by the Department of the Interior's Bureau of Indian Affairs (BIA). See Department of the Interior, Bureau of Indian Affairs, Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Affairs, 89 Fed. Reg. 944, (Jan. 8, 2024); Department of the Interior, Bureau of Indian Affairs, *Tribal Leaders Directory*, <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes> (last visited Sept. 9, 2024). According to BIA, a federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs. Department of the Interior, Bureau of Indian Affairs, *What is a federally recognized tribe?*, <https://www.bia.gov/faqs/what-federally-recognized-tribe#> (last visited Sept. 9, 2024). There are currently 229 federally recognized Tribes, comprised of both Villages and other Tribal entities in Alaska. Department of the Interior, Bureau of Indian Affairs, *Alaska Region: Overview*, <https://www.bia.gov/regional-office/alaska-region> For ease of reference, we use "Alaska Native Villages" herein.

⁵⁹⁷ See U.S. Government Accountability Office, Tribal Broadband: FCC Should Undertake Effort to Better Promote Tribal Access to Spectrum, GAO-19-75, at 1, n.1 (2018); Transforming the 2.5 GHz Band, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446, 5464, para. 49 (2019) (*2.5 GHz Band 2019 Report and Order*).

⁵⁹⁸ *2.5 GHz Band 2019 Report and Order*, 34 FCC Rcd at 5464, para. 49; see also 47 CFR § 73.7000 (providing a definition "Tribe" and citing the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (1994)).

(ANVSA) by the Census Bureau,⁵⁹⁹ and that much of Alaska lies outside these areas, which opens the possibility to multiple claims of sovereignty. In section 54.5, the Commission defines Tribal lands for the purposes of the high-cost support as including “Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).”⁶⁰⁰ However, Alaska Native regions often contain many different Tribal entities, and given the size of the Alaska Native regions, several of the Tribal entities in the respective Alaska Native region may not be physically located near the deployment in a region. Should the Tribal consent process be limited to new deployments or buildouts where the facilities placement occurs within the census boundaries of an ANVSA, as this situation would clearly identify that a particular Tribal entity is directly affected by a deployment? We seek comment generally on these issues.

I. Promoting Digital Equity

260. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations, and invites comment on any benefits (if any) that may be associated with the proposals and issues discussed herein.⁶⁰¹ Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission’s relevant legal authority.

VI. PROCEDURAL MATTERS

A. Paperwork Reduction Act

261. The *Further Notice* contains possible new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this *Further Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees in the IRFA in Appendix B.

B. Congressional Review Act

262. 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) because it is promulgated under the Telecommunications Act of 1996 and the amendments made by the Act. The Commission will send a copy of this Order to

⁵⁹⁹ U.S. Census Bureau, *Definitions of the American Indian and Alaska Native Geographic Areas*, <https://www.census.gov/programs-surveys/geography/about/glossary/ai-an-definitions.html> (last visited Sept. 9, 2024).

⁶⁰⁰ 47 CFR § 54.5.

⁶⁰¹ 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. 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 (Jan. 20, 2021).

Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

C. Regulatory Flexibility Act

263. The Regulatory Flexibility Act of 1980, as amended (RFA),⁶⁰² 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.”⁶⁰³ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Order on small entities. The FRFA is set forth in Appendix B.

264. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice*. The IRFA is set forth in Appendix C. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

D. Comment Filing Procedures, Ex Parte Rules

265. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically 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.

266. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁶⁰⁴ Persons making *ex parte* presentations must file a

⁶⁰² 5 U.S.C. §§ 601-612. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996); the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (2010).

⁶⁰³ 5 U.S.C. § 605(b).

⁶⁰⁴ 47 CFR § 1.1200(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.

E. Additional Information

267. *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).

268. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this Report and Order and Further Notice of Proposed Rulemaking will be available on <https://www.fcc.gov/proposed-rulemakings>.

269. *Additional Information.* For additional information on the Order, contact Rebekah Douglas, Rebekah.Douglas@fcc.gov, of the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-7931, or Matt Warner, Matthew.Warner@fcc.gov, of the Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, at (202) 418-2419.

VII. ORDERING CLAUSES

270. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 5, 201, 205, 214, 254, 303(r), 403, and 1302 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201, 205, 214, 254, 303(r), 403, and 1302 this Order IS ADOPTED. This Order SHALL BE EFFECTIVE thirty days after publication in the Federal Register.

271. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 201, 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 205, 214, 254, 303(r), 403, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR §§ 1.1, 1.421, this Further Notice of Proposed Rulemaking IS ADOPTED.

272. IT IS FURTHER ORDERED that part 54 of the Commission's rules, 47 CFR pt. 54, IS AMENDED as set forth in Appendix A.

273. IT IS FURTHER ORDERED that the Office of the Secretary SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, and a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, , to the Chief Counsel for Advocacy of the Small Business Administration.

274. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.306 by revising paragraph (c) and adding paragraph (e) to read as follows:

* * * * *

(c) **Support amounts and support term.** For a period of 8 years beginning on or after January 1, 2017, at a date set by the Wireline Competition Bureau, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to:

* * * * *

(e) Beginning January 1, 2025 and ending December 31, 2028, an Alaska Plan rate-of-return carrier (as that term is defined in § 54.5) serving Alaska that elected support pursuant to paragraph (a) shall be authorized to receive an amount of monthly support during the Alaska Connect Fund Transition equal to the amount authorized as of December 1, 2024, multiplied by 1.30.

3. Amend § 54.308 by revising paragraph (c), redesignating paragraph (e) as paragraph (g), and adding paragraphs (e), (f) and (h) to read as follows:

* * * * *

(c) Alaskan rate-of-return carriers receiving support from the Alaska Plan pursuant to § 54.306 are exempt from paragraph (a) of this section and are instead required to offer voice and broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas, subject to any limitations in access to backhaul as described in § 54.313(g). Alaska Plan and recipients' specific broadband deployment and speed obligations shall be governed by the terms of their approved performance plans as described in § 54.306(b). Alaska Plan recipients must also comply with paragraph (b) of this section.

* * * * *

(e) *Minimum provision of service.* Mobile providers receiving support from the Alaska Connect Fund must provide service at the same minimum service levels as required under the Alaska Plan and may not provide less coverage or provide service using a less advanced technology than the provider committed to under the Alaska Plan.

- (1) This includes continuing to provide voice service, maintaining at least the level of data service the mobile provider offered to its previous coverage area as of the end of the Alaska Plan, and improving service consistent with the mobile provider's approved performance plan through the end of Alaska Connect Fund.

- (2) The Wireless Telecommunications Bureau in coordination with the Office of Economics and

Analytics have authority to compare Broadband Data Collection availability data as of December 31, 2026 with subsequent Broadband Data Collection availability data to ensure that mobile voice and mobile broadband service levels and coverage are maintained or improved in all previously served areas.

(f) *Reasonably comparable services and rates.* A mobile provider that is receiving support from the Alaska Connect Fund pursuant to § 54.318 shall certify in its annual compliance filings that its rates are reasonably comparable to rates for comparable offerings in the Cellular Market Area (CMA) for Anchorage, Alaska. An Alaska Connect Fund mobile provider must also demonstrate compliance in duplicate-support areas by December 31, 2029, and in single support areas by December 31, 2029, December 31, 2031, and December 31, 2034 by showing that it publishes, on its publicly accessible website at least one mobile broadband plan and at least one stand-alone voice plan that meets the following requirements:

- (1) is substantially similar to a service plan offered by at least one different mobile provider in the CMA for Anchorage, Alaska, and
- (2) is offered for the same or a lower rate than the matching plan in the CMA for Anchorage.
- (3) This demonstration must include usage allowances for the comparable plans in Anchorage.
- (4) The Wireless Telecommunications Bureau may employ alternative benchmarks or dates appropriate for specific competitive Eligible Telecommunications Carriers in assessing carrier offerings. Participants in the Alaska Connect Fund may not cite their own plans in Anchorage as evidence of meeting the reasonably comparable rate condition.

* * * * *

(h) Alaska Connect Fund Mobile Provider Cybersecurity and Supply Chain Risk Management Requirements.

- (1) An Alaska Connect Fund mobile support recipient must implement operational cybersecurity and supply chain risk management plans meeting the requirements of this section as a condition of receiving Alaska Connect Fund support. All mobile provider recipients must implement their cybersecurity and supply chain risk management plans by December 31, 2029.
- (2) An Alaska Connect Fund mobile support recipient must certify that it has implemented the plans required under paragraph (h)(1) of this section and must submit the plans to the Administrator by December 31, 2029 or within 30 days of approval under the Paperwork Reduction Act, whichever is later.
- (3) An Alaska Connect Fund mobile support recipient that fails to comply with any Alaska Connect Fund cybersecurity or supply chain risk management requirement is subject to the following non-compliance measures:
 - (i) The Wireless Telecommunications Bureau shall direct the Administrator to withhold 25 percent of the Alaska Connect Fund support recipient's monthly support for failure to comply with paragraphs (h)(1) and (h)(2) of this section until the support recipient comes into compliance.
 - (ii) At any time during the support term, if an Alaska Connect Fund mobile support

recipient does not have in place operational cybersecurity and supply chain risk management plans meeting the requirements of this section, the Wireless Telecommunications Bureau shall direct the Administrator to withhold 25 percent of the support recipient's monthly support.

(iii) Once the Alaska Connect Fund mobile support recipient comes into compliance, the Administrator shall stop withholding support, and the support recipient will receive all of the support that had been withheld pursuant to this section.

(4) An Alaska Connect Fund mobile support recipient's cybersecurity risk management plan must reflect at least the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity v.1.1 (2018) (NIST Framework) or any successor version of the NIST Framework, that may be adopted by the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Public Safety and Homeland Security Bureau after notice and comment, and must reflect established cybersecurity best practices that address each of the Core Functions described in the NIST Framework, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives or the Center for Internet Security Critical Security Controls.

(5) An Alaska Connect Fund mobile support recipient's supply chain risk management plan must reflect the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161.

(6) If an Alaska Connect Fund mobile support recipient makes a substantive modification to a plan under this section, the provider must file an updated plan with the Administrator within 30 days of making the modification. A modification to a plan under this section is substantive if at least one of the following conditions apply:

(i) There is a change in the plan's scope, including any addition, removal, or significant alteration to the types of risks covered by the plan (e.g., expanding a plan to cover new areas, such as supply chain risks to Internet of Things devices or cloud security, could be a substantive change);

(ii) There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);

(iii) There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);

(iv) There is a shift in the threat landscape prompting the organization to recognize that emergence of new threats or vulnerabilities that were not previously accounted for in the plan;

(v) Updates are made to comply with new cybersecurity regulations, standards, or laws;

(vi) Significant changes are made in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or

(vii) A large-scale technological change is made, including the adoption of new systems

or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

4. Amend § 54.310 by adding paragraph (i) to read as follows:

* * * * *

(i) Beginning January 1, 2025 and ending December 31, 2028, any price cap carrier serving Alaska that elected to receive Connect America Phase II frozen support amounts in lieu of model-based support, and is authorized to receive support as of December 31, 2024, shall be authorized to receive an amount of monthly support during the ACF Transition equal to the amount of monthly support authorized as of December 1, 2024, multiplied by 1.30.

5. Amend § 54.311 by adding paragraph (g) to read as follows:

* * * * *

(g) Beginning January 1, 2025, and ending December 31, 2028, an A-CAM carrier that serves the state of Alaska that has made an election of support pursuant to paragraph (a) and is authorized to receive support as of December 31, 2024, shall be authorized to receive an amount of monthly support during the ACF Transition equal to the amount of monthly support authorized as of December 1, 2024, multiplied by 1.30.

6. Amend § 54.313 by revising paragraph (f)(3) and adding paragraph (r) to read as follows:

* * * * *

(f) * * *

(3) Rate-of-return carriers participating in the Alaska Plan must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. To the extent that such new terrestrial backhaul facilities are constructed, or other satellite backhaul becomes commercially available, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Alaska Plan, the funding recipient must provide a description of the backhaul technology, the date at which that backhaul was made commercially available to the carrier, and the number of locations that are newly served by the new terrestrial backhaul or other satellite backhaul. Within twelve months of the new backhaul facilities becoming commercially available, through December 31, 2026, funding recipients must certify that they are offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and with usage capacity that is reasonably comparable to comparable offerings in urban areas. Funding recipients' minimum speed deployment obligations will be reassessed as specified by the Commission.

* * * * *

(r) In addition to the information and certifications in paragraph (a) of this section, any competitive eligible telecommunications carrier participating in the mobile portion of the Alaska Connect Fund must provide the following:

(1) Where WTB, in coordination with OEA, has approved lesser commitments in a mobile provider's performance plan than the minimum deployment goals under the mobile portion of the Alaska Connect Fund, as set forth in §54.318(f)(5), for all or a certain portion of the

provider's service area, the provider must certify, by census tract, that the basis for which it qualified for lesser commitments still applies in the previous calendar year and describe on FCC Form 481 the efforts it has taken to improve conditions that served as the basis for the lesser commitments. When the basis for the lesser commitments has changed in the previous calendar year, allowing the minimum commitments to be achieved in the census tract, the mobile provider must certify to this in FCC Form 481.

- (2) Where a provider certifies on FCC Form 481 that conditions have changed such that it no longer qualifies for lesser commitments in a census tract, the provider must submit additional information and updated performance plans into the Alaska Connect Fund docket via the FCC Electronic Comment Filing System. Where conditions have changed, the mobile provider must submit, for the affected census tracts:

(i) A description of the change;

(ii) The date on which the change occurred;

(iii) The resolution 9 hexagons (hex-9s) using the H3 standardized geospatial indexing system as defined in § 1.7001(a)(20) within the census tract that could be served as a result of the changed conditions; and

(iv) Revised performance commitments factoring in the change. These filings must be made simultaneously with the submission of the FCC Form 481. A mobile provider may seek confidential treatment of information required in this section if the conditions for confidentiality are met.

7. Amend § 54.316 by revising the introductory text of paragraphs (a), adding paragraph (a)(10) and revising paragraph(c)(1) to read as follows:

(a) **Broadband deployment reporting.** Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, competitive ETCs receiving mobile support from the Alaska Connect Fund, and ETCs awarded support to serve fixed locations through a competitive bidding process shall have the following broadband reporting obligations:

* * * * *

(a)(10) Mobile providers subject to the requirements of § 54.318 shall submit backhaul and middle mile maps covering eligible areas. At the end of any calendar year for which backhaul and middle-mile facilities were deployed, these recipients shall also submit updated maps showing backhaul and middle-mile facilities that are or will be used to support their services in eligible areas. Where the recipient leases links, the recipient must provide the name of the middle-mile provider(s) that the recipient leases links from per area.

* * * * *

(c)(1) Price cap carriers that accepted Phase II model-based support, rate-of-return carriers, ETCs receiving Alaska Connect Fund mobile support, and recipients of Rural Digital Opportunity Fund support must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

* * * * *

8. Add § 54.318 to read as follows:

§54.318 Alaska Connect Fund for competitive eligible telecommunications carriers receiving mobile support.

(a) *Carriers eligible for extended support.* A competitive eligible telecommunications carrier previously receiving support for remote Alaska pursuant to section 54.317(e) shall be eligible for extended support, if in compliance with other eligibility requirements.

(1) An Alaska Plan mobile provider that opts into the Alaska Connect Fund may have its Alaska Connect Fund support delayed, or may be deemed ineligible to participate in the Alaska Connect Fund, if the Wireless Telecommunication Bureau determines that the mobile provider has failed to comply with the public interest obligations or other terms and conditions of the Alaska Plan or its Alaska Plan commitments, or failed to meet an Alaska Plan build-out milestone.

(2) The Wireless Telecommunications Bureau may determine whether an Alaska Plan mobile provider is ineligible for the Alaska Connect Fund, ineligible for specific coverage areas, or will have its Alaska Connect Fund support delayed until it meets its outstanding obligations, based on the mobile provider's compliance with Alaska Plan and Broadband Data Collection obligations.

(b) *Election of extended support.* Subject to the requirements of this section, competitive eligible telecommunications carriers receiving support for mobile service pursuant to section 54.317(e) may opt into an extension of that support under the Alaska Connect Fund by submitting their performance plans, consistent with the requirements of this section, on or before September 1, 2026 to the Wireless Telecommunications Bureau for approval. Mobile providers exercising this option with approved performance plans shall have extended support beginning on January 1, 2027. Mobile providers receiving support pursuant to section 54.317(e) that do not opt into extended ACF support will have their support end with the Alaska Plan on December 31, 2026, as set forth in paragraph (i) of this section.

(c) *Eligible areas.*

(1) Extended support under the Alaska Connect Fund may be used to support mobile service in all of Alaska, except:

(i) Previously ineligible areas under the Alaska Plan

(A) Nonremote areas, as defined in § 54.307(e)(3)(i);

(B) Areas as of December 31, 2014, that received 4G LTE service directly from mobile providers that were either unsubsidized or ineligible to claim the delayed phase down under § 54.307(e)(3) and covering, in the aggregate, at least 85 percent of the population of the census block;

(ii) Competitive areas, as defined as:

(A) Areas with an unsubsidized mobile provider offering 5G-NR service at minimum speeds of 7/1 Mbps in an outdoor stationary environment based on mobile providers' Broadband Data Collection availability data as of December 31, 2024; or

(B) Areas with three or more mobile providers—with at least one of those mobile

providers being unsubsidized—offering at least 4G LTE service at minimum speeds of 5/1 Mbps in an outdoor stationary environment based on mobile providers' Broadband Data Collection availability data as of December 31, 2024.

(iii) Areas deemed inaccessible or unsafe for testing by the Wireless Telecommunications Bureau, in coordination with the Office of Economics and Analytics, and reflected in the Eligible-Areas Map, as described in paragraph (c)(2) of this section.

(2) *Eligible-areas map.* The Wireless Telecommunications Bureau in coordination with the Office of Economics and Analytics will publish a map or maps of which areas are eligible and ineligible for Alaska Connect Fund mobile support, and of those that are eligible, which are in duplicate-support areas, single-support areas, or other eligible areas, as defined in paragraph (d)(1) of this section. The map or maps will identify all such areas on a resolution 9 hexagon (hex-9) basis using the H3 standardized geospatial indexing system as defined in § 1.7001(a)(20). Competitive eligible telecommunications carriers seeking mobile support under the Alaska Connect Fund must use the Eligible-areas map to determine the areas in Alaska that are eligible for support. The Wireless Telecommunications Bureau in coordination with the Office of Economics and Analytics may resolve any disputes that may arise over the classification of an area and may periodically update the map(s) throughout the course of the Alaska Connect Fund, as necessary. Providers are to communicate which areas should be deemed ineligible by emailing ACF@fcc.gov as soon as such areas are known by the provider.

(d) *Support amounts and support term.* Support for Alaska Connect Fund will begin January 1, 2027, and the initial support under the Alaska Connect Fund will act as an extension of support (extended support) to Alaska Connect Fund single- and duplicate-support areas after the Alaska Plan ends

(1) Areas.

- (i) support areas are areas covered by one Alaska Plan mobile-provider participant.
- (ii) Duplicate-support areas are areas covered by two or more Alaska Plan mobile provider participants.
- (iii) Eligible areas that are not identified as a duplicate-support or single-support areas will be noted as “other eligible areas,” until otherwise classified throughout the course of the Alaska Connect Fund.
- (iv) Areas that are ineligible under the Alaska Connect Fund are not considered to be single- or duplicate-support areas, and mobile participants under the Alaska Connect Fund cannot use their support to provide mobile service in these areas.

(2) Extended Support.

- i. Single-support areas will receive extended support until December 31, 2034.
- ii. Duplicate-support areas will receive extended support until December 31, 2029, unless otherwise extended by the Wireless Telecommunications Bureau.

(e) *Use of support.* Support allocated through the Alaska Connect Fund may only be used to provide mobile voice and mobile broadband service in eligible areas. Alaska Connect Fund recipients may use their support for both operating expenses and capital expenses for deploying, upgrading, and maintaining mobile voice and broadband-capable networks, including middle-mile improvements needed to those

ends. As long as an Alaska Connect Fund recipient is providing service to its awarded area consistent with its public interest obligations service expenditures in that area will be eligible for support. Expenditures for middle-mile facilities may occur outside of eligible areas, so long as they are necessary to provide mobile voice and broadband service in the areas where the Alaska Connect Fund recipient receives support.

(f) *Performance plans.* In order to receive extended support pursuant to this section, a competitive eligible telecommunications carrier must be subject to a performance plan approved by the Wireless Telecommunications Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with this section and the requirements adopted by the Commission for the Alaska Connect Fund.

(1) Performance plans must:

- (i) Include the name of the census tract(s) the mobile provider commits to serve;
- (ii) Include the minimum technology level and speed in an outdoor stationary environment the mobile provider commits to provide;
- (iii) Specify the number of hex-9s committed to be covered within each census tract at the committed-to technology and speed levels, which shall be no less than the mobile provider's coverage in the Alaska Plan, minus any ineligible areas; and
- (iv) Specify the number of additional hex-9s committed to within each census tract at the committed-to technology and speed levels that are comparable hex-9s as described in paragraph (h) of this section.

(2) A mobile provider must commit to cover any eligible hex-9 in its support area and may commit to cover any eligible hex-9 not covered by other mobile providers.

(3) Providers are to reflect the additional coverage that is required to retain support due to areas being deemed ineligible solely in the comparable hex-9 category of their performance plans, consistent with paragraph (h) of this section.

(4) The Wireless Telecommunications Bureau will adopt requirements and develop data specifications, after appropriate public process, concerning the format and method of uploading Alaska Connect Fund performance plans.

(5) Alaska Connect Fund performance plan submissions are due September 1, 2026. Separate performance plans are required for single-support areas and for duplicate-support areas. A mobile provider's Alaska Connect Fund support may not begin until the Wireless Telecommunications Bureau approves the performance plan of the mobile provider. The Wireless Telecommunications Bureau may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments, including requiring, after notice and comment, additional commitments in duplicate-support areas that must be met by December 31, 2034, if Alaska Connect Fund Mobile Phase I is extended in those areas.

(6) Where technically and financially feasible, providers in single-support areas are expected to extend 5G service to populations who are currently served by 4G LTE or less, and providers in duplicate-support areas are expected to work to extend by the end of December 2029 at least 4G

LTE at 5/1 Mbps in an outdoor stationary environment to areas where they do not currently offer it. For single-support areas, providers participating in the Alaska Connect Fund are expected to use Alaska Connect Fund support to upgrade service beyond the service commitment level they made in the Alaska Plan, with an ultimate goal of achieving 5G NR at 35/3 Mbps in single-support areas, where technically and financially feasible, by the end of December 2034. Providers in single-support areas are to report to WTB the progress they have made beyond Alaska Plan service levels by December 31, 2029, and to meet their commitments by the December 31, 2031 interim milestone and the December 31, 2034 final milestone.

(7) The Wireless Telecommunications Bureau may approve lower technology and speeds than the minimum technology and speeds specified in this section, in some areas as warranted on a case-by-case basis. A mobile provider must explicitly state the reason it cannot commit to the minimum deployment requirement as a notation under the proposed performance plan for each census tract. The Wireless Telecommunications Bureau has discretion to determine whether the request is adequately justified and if so, to approve the performance plan. If conditions change such that a mobile provider no longer qualifies for lesser commitments in a census tract, the provider must submit additional information and updated performance plans into the Alaska Connect Fund docket via the FCC Electronic Comment Filing System. Where conditions have changed, the mobile provider must submit, for the affected census tracts:

- (i) A description of the change;
- (ii) The date on which the change occurred;
- (iii) The resolution 9 hexagons (hex-9s) using the H3 standardized geospatial indexing system as defined in § 1.7001(a)(20) within the census tract that could be served as a result of the changed conditions; and
- (iv) Revised performance commitments factoring in the change. These filings must be made simultaneously with the submission of the FCC Form 481. A mobile provider may seek confidential treatment of information required in this section if the conditions for confidentiality are met.

(8) Initial Alaska Connect Fund performance plans must rely on Broadband Data Collection availability data and data standards on which the National Broadband Map is based and on mobile providers' availability data in Alaska as of December 31, 2024. Consistent with Broadband Data Collection requirements, as provided in § 1.7004, all Alaska Connect Fund mobile support recipients must show that consumers can receive the minimum technology level and speed with a cell edge probability of not less than 90% and a cell loading of not less than 50%.

(9) If any mobile providers do not have their performance plans approved by the Wireless Telecommunications Bureau by December 31, 2026, those mobile providers' support may be delayed.

(10) No later than 60 days after the end of each participating mobile provider's commitment (milestone) deadline, it must submit a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan, and that it has met the requisite public interest obligations contained in the Alaska Connect Fund Order.

(11) The Wireless Telecommunications Bureau may raise the technology and performance floor,

as appropriate, after opportunity for public notice and comment, during the course of the Alaska Connect Fund.

(g) *Deemed covered.* The geographic areas identified as eligible for support for Alaska Connect Fund mobile recipients will be made available by the Wireless Telecommunications Bureau in coordination with the Office of Economics and Analytics in the Eligible-Areas Map defined in paragraph(c)(2) of this section in the form of hexagons at the resolution 9 level (hex-9s) using the H3 standardized geospatial indexing system as defined in § 1.7001(a)(20).

(1) Hex-9s will be deemed covered using the following process:

- (i) Overlay resolution 11 hexagons (hex-11s) on the “raw” mobile coverage polygons submitted in the Broadband Data Collection in Alaska. If the centroid (i.e., the geographic center point) of the hex-11 overlaps any of those boundaries, then the entire hex-11 is considered covered by that boundary and “served”.
- (ii) Divide the number of served grandchild hex-11s belonging to the grandparent hex-9 by the total number of grandchild hex-11s belonging to the grandparent hex-9 to determine the percentage of the hex-9 that is considered served. The centroid of a hex-11 must fall within the boundary of Alaska to be included in this calculation.
- (iii) If at least 70% of the grandchild hex-11s belonging to a grandparent hex-9 are served, then the entire hex-9 will be considered served.

(h) *Comparable areas.* Mobile providers that received support under the Alaska Plan for coverage of newly ineligible areas and that wish to retain their support level must use their Alaska Connect Fund support to cover a comparable number of otherwise uncovered hex-9s elsewhere, subject to claw back in their support if they do not do so. Mobile providers must incorporate their comparable areas into their performance plans under the Alaska Connect Fund for Wireless Telecommunications Bureau approval. Specifically, each mobile provider must remove the ineligible hex-9s from its commitment, and in a separate category in the performance plan, specify how many comparable hex-9s it commits to cover, by census tract.

(1) For areas where a mobile provider may lose support because an area is deemed ineligible after the provider’s Alaska Connect Fund performance plan has been approved, the mobile provider will have an opportunity to retain support by committing to cover a comparable number of uncovered hex-9s elsewhere. As mobile providers discover ineligible hex-9s after their performance plans are approved, they must remove those ineligible hex-9s from their hex-9 commitments in their performance plans and reflect the new number of comparable hex-9s in the comparable hex-9 commitments category in their new, proposed performance plans. The mobile provider must submit new performance plans whenever they need new comparable hex-9s approved. The mobile provider must provide a notation in the performance plan for the comparable hex-9s, identifying which census tracts the ineligible hex-9s are located and how many of those hex-9s are being replaced by any particular group of comparable hex-9s. The Wireless Telecommunications Bureau, in coordination with the Office of Economics and Analytics, may require additional clarifying information that allows identification and determination of which comparable hex-9s are replacing which group of ineligible hex-9s. All inaccessible hex-9s and updated performance plans must be reported before their buildout milestones.

(2) Where a mobile provider commits to cover the same number of uncovered hex-9s as the area that was newly deemed ineligible, the coverage shall be deemed comparable.

(3) Where a mobile provider claims that fewer uncovered hex-9s should be deemed as comparable to the number of hex-9s deemed ineligible, the provider must provide justification that the smaller number of hex-9s is comparable to the number of hex-9s that the provider was using support to cover. The Wireless Telecommunications Bureau, in coordination with the Office of Economics and Analytics, may determine whether a mobile provider is covering a comparable number of hex-9s.

(4) Once approved, comparable areas will be treated as part of the mobile provider's single-support areas, subject to the deployment obligations and performance requirements that apply for those areas.

(5) Where an Alaska Connect Fund mobile support recipient covers a new, uncovered hex-9, it will be considered a single-support area attributed to the mobile provider that showed coverage to that hex-9 first, based on Broadband Data Collection availability data, or, in case more than one mobile provider provided coverage for the same area in the same data set or one provider's earlier filed data is deemed inaccurate, whichever provider has its updated performance plan accepted first. Where two providers cover the same hex-9 and one provider claims that the area is inaccessible for testing, but the other provider does not, the area would become a part of the latter provider's single-support area, and the former provider would have to cover the same number of hex-9s elsewhere.

(6) If a mobile provider discovers that some areas are inaccessible during required speed testing or during an audit, the mobile provider will be in noncompliance for those hex-9s, and potentially additional hex-9s if the inaccessible hex-9s were selected through random sampling. If this noncompliance is discovered for the interim milestone testing, the mobile provider may identify, in an updated performance plan, comparable hex-9s that it will serve.

(i) Phase down schedule for mobile competitive eligible telecommunications carrier Alaska Connect Fund extended support.

(1) Mobile providers subject to phase down or proportional phase down shall have phase down occur on the following schedule:

(i) For the first twelve months after the phase down start date, each such competitive eligible telecommunications carrier shall receive two-thirds of the monthly support amount the carrier received pursuant to the Alaska Plan.

(ii) For the thirteenth through twenty-fourth months after the phase down start date, each such competitive eligible telecommunications carrier shall receive one-third of the monthly support amount the carrier received pursuant to the Alaska Plan.

(iii) By the twenty-fifth month, no such competitive eligible telecommunications carrier shall receive universal service support pursuant to this section.

(2) Competitive eligible telecommunications carriers providing mobile service that receive support under the Alaska Plan pursuant to § 54.317(e), and that are eligible to receive extended support under this section but do not opt in to receive extended support pursuant to paragraph (b) of this section, shall have their high-cost support end with Alaska Plan on December 31, 2026.

(3) Competitive eligible telecommunications carriers previously receiving mobile support pursuant to § 54.317(e) for an area newly ineligible under the Alaska Connect Fund that do not

have an updated performance plan approved by the Wireless Telecommunications Bureau with comparable areas for the Alaska Connect Fund will have their proportional support phased down, beginning 90 days after being notified by the Wireless Telecommunications Bureau that they are receiving support in an ineligible area or by January 1, 2027, whichever is later. Competitive eligible telecommunications carriers that have new performance plans with comparable areas approved by the Wireless Telecommunications Bureau may receive restoration of the support that was phased down for the areas that the comparable areas replaced.

(4) If a mobile provider's updated performance plan is not approved within 90 days of the mobile provider being notified that it is covering ineligible hex-9s because those hex-9s cannot be tested, then the mobile provider will have a proportional amount of support phased down. If the mobile provider's updated performance plan for covering comparable hex-9s is approved after 90 days, it may have any support that was phased down restored.

(5) Competitive eligible telecommunication carriers providing mobile service that receive support under the Alaska Plan pursuant to § 54.317(e), but are found by the Wireless Telecommunications Bureau to be ineligible for extended support under the Alaska Connect Fund, shall not have their high cost support for mobile services phased down. Their support under the Alaska Plan will be terminated as of December 31, 2026. If the Wireless Telecommunications Bureau determines that an Alaska Plan mobile provider did not meet its Alaska Plan buildout obligations after the commencement of the Alaska Connect Fund, and also determines that the mobile provider is not eligible to receive Alaska Connect Fund mobile support, the Wireless Telecommunications Bureau can take all actions necessary to recover Alaska Connect Fund support, including those set forth in sections 54.320(c) and (d). This does not impact any separate actions related to sections 54.320(c) and (d) with respect to the Alaska Plan final milestone.

(j) Annual submission of BDC infrastructure data

(1) A mobile provider must submit, on an annual basis, all of the infrastructure data that it would submit as part of the Broadband Data Collection mobile verification process, as provided in § 1.7006(c), for all infrastructure used to serve its supported area for coverage as of December 31 of each year, due by March 1 of the following year.

(2) Mobile providers must submit these infrastructure data to the Wireless Telecommunication Bureau, subject to any additional or amended instructions.

(k) Submission of speed test data.

(1) A mobile provider receiving more than \$5 million annually in Alaska Connect Fund support must submit speed test data along with its certification that it has met its milestone Alaska Connect Fund commitments.

(2) The speed test data must conform to the Broadband Data Collection Specifications for Mobile Speed Test Data, except that "accessible" hexes that are included in sampling for purposes of the Alaska Connect Fund must include any hexagon that is testable by at least an uncrewed Aircraft System.

(3) If a hex-9 is determined to be untestable and, thus, ineligible and this is discovered during speed testing of a provider's commitments, the hex-9—and any surrounding hex-9s also deemed to be untestable—will be counted as noncompliant with the provider's commitments. The provider's support may be reduced accordingly, consistent with the compliance tiers set forth in §

54.320(d).

(4) Some hexes may only be accessible by uncrewed aircraft systems (UAS). The Wireless Telecommunications Bureau in coordination with the Office of Economics and Analytics may consider under what circumstances alternatives to on-the-ground speed testing data are appropriate to validate coverage in such areas, including use of UAS and to make any other accommodations to the testing necessary to determine whether the providers have met their commitment or not. To the extent that a mobile provider is permitted to use UAS to conduct testing, it may do so if the allocation and service rules permit airborne use of the spectrum that will be used to provide the mobile service to be tested as part of the drive tests. Otherwise, the provider must additionally obtain a waiver from the Commission (pursuant to § 1.925) of any airborne limitations. Where UAS are used for speed testing in the Alaska Connect Fund:

(i) UAS should mirror on-the-ground testing (outdoor stationary environment) and fly at the lowest, safest possible elevation, to best reflect on-the-ground usage.

(ii) UAS performing speed tests must:

(A) At all times operate at less than 200 feet above ground in remote areas of Alaska where road-based testing is impractical/impossible;

(B) Limit power to the minimum necessary to accomplish testing; and

(C) Upon receipt of a complaint of interference from a co-channel licensee, notify the Commission and either remedy the interference or cease operations.

(iii) There may be circumstances where other methods are equally safe to using UAS but may better reflect the on-the-ground user experience, in which case, the Wireless Telecommunications Bureau, in coordination with the Office of Economics and Analytics, may restrict the use of UAS in some hex-9s for speed testing purposes, even when UAS usage is otherwise permissible.

(l) *Point of contact information.* A mobile provider must provide the Wireless Telecommunications Bureau a point of contact for discussions regarding its performance plan and data submissions. Alaska Connect Fund recipients must notify the Wireless Telecommunications Bureau within 30 days whenever the point of contact changes at a company. All such notifications must be submitted to ACF@fcc.gov.

(m) *Reporting, recordkeeping and compliance obligations.*

(1) Mobile providers receiving Alaska Connect Fund support shall be subject to the reporting, certification, and other obligations set forth in §§ 54.9, 54.10, 54.11, 54.313 and 54.314.

(2) Mobile providers receiving Alaska Connect Fund support shall be subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in § 54.320. If specific performance obligations are not achieved in the time period identified in the approved performance plans or other obligations or terms and conditions for the receipt of funding under the Alaska Connect Fund are not met the mobile provider shall be subject to the penalties set forth in § 54.320(c) and (d). Audits may include speed tests tailored to the circumstances of the information that is to be verified; providers under other speed test obligations may also be subject to any and all audits, including speed test audits.

9. Amend § 54.320 by adding paragraph (e) to read as follows:

* * * * *

(e) Each hex-9 in the Alaska Connect Fund mobile provider's performance plan shall be considered a "location" for purposes of section 54.320(d).

10. Add subpart U, to read as follows:

Subpart U – Alaska Connect Fund for Fixed Services

§ 54.2100 Alaska Connect Fund Transition – ACF Transition

Alaska Connect Fund Transition (ACF Transition), as discussed in FCC 24-116, refers to high-cost support for fixed services provided from January 1, 2025 through December 31, 2028 to carriers serving Alaska and authorized pursuant to §§ 54.306(e), 54.310(i), and 54.311(g).

§ 54.2101 Alaska Connect Fund Fixed – Fixed ACF

(a) **Intended use of support.** Carriers receiving Alaska Connect Fund Fixed (Fixed ACF) support, as discussed in FCC 24-116, shall use the support to operate and maintain a network providing voice and broadband internet access service to all locations for which it is authorized to receive support consistent with the public interest obligations under § 54.2101(j);

(b) **Term of Support.** Fixed ACF support shall be provided from January 1, 2029 through December 31, 2034.

(c) **Eligible Carriers.** Fixed ACF support shall be available only to eligible telecommunications carriers in Alaska that have received or been awarded federal or state government infrastructure support to deploy networks capable of providing voice service and broadband internet access service meeting the public interest obligations as described in paragraph (i) of this section but such eligible telecommunications carrier are not entitled to receive such support. The Wireline Competition Bureau shall determine carriers eligible to receive Fixed ACF support but may not authorize any carrier for Fixed ACF support that is not an eligible telecommunications carrier. The Wireline Competition Bureau shall use the Broadband Funding Map to assist in determining eligible carriers. The Wireline Competition Bureau shall determine, after opportunity for public notice and comment, whether additional financial or other requirements for participants in Fixed ACF are in the public interest.

(d) **Eligible Location.** The Wireline Competition Bureau shall determine locations eligible for ACF Fixed support. In determining eligible locations, the Wireline Competition Bureau shall:

(i) consider allocating Fixed ACF support based on the categories of locations as provided by the Alaska State Broadband Office for the purposes of the Broadband Equity, Access, and Deployment (BEAD) Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021); and

(ii) not authorize Fixed ACF support for more than one carrier for any eligible location.

(e) **Support amounts.** The Wireline Competition Bureau shall determine an amount of annual support available for each eligible location.

(f) **Budget.** The total annual amount of support authorized may not exceed \$107,600,000, the annual budget adopted by the Commission in FCC 24-116, or a budget adopted by the Wireline Competition Bureau pursuant to delegated authority. Any budget adopted pursuant to delegated authority may not exceed 15% above \$107,600,000 per year.

(g) ***Election of support.*** The Wireline Competition Bureau shall adopt rules and provide guidance for the offer and election of Fixed ACF support no later than twelve months prior to the start of the Fixed ACF support term.

(h) ***Disbursement of Fixed ACF support.*** The Wireline Competition Bureau shall announce in a public notice when an eligible telecommunications carrier is authorized to receive Fixed ACF support. The public notice shall detail how disbursements will be made.

(i) ***Public Interest Obligations.*** The Wireline Competition Bureau shall adopt public interest obligations requiring the provision of voice service and broadband internet access service, requiring broadband speed of 100 Mbps download and 20 Mbps upload, with a round-trip latency of 100 ms or less, and usage capacity and rates that are reasonably comparable to comparable offerings in urban areas. The Wireline Competition Bureau may adopt public service obligations requiring broadband speeds below 100 Mbps download and 20 Mbps upload and/or round-trip latency greater than 100 ms to accommodate circumstances of specific locations. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau and/or Office of Economics and Analytics. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau and/or the Office of Economics and Analytics, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in Alaska.

(j) ***Reporting Obligations, Compliance, and Recordkeeping.***

(i) Recipients of Fixed ACF support shall be subject to the reporting obligations set forth in §§ 54.9, 54.10, 54.11, 54.313 and 54.314.

(ii) Recipients of Fixed ACF support shall be subject to the reporting obligations set forth in § 54.316, to the extent the recipient has defined broadband deployment obligations.

(ii) Recipients of Fixed ACF support shall comply with methodologies and non-compliance measures adopted pursuant to § 54.313(a)(6), as of the date the Alaska Connect Fund Order, FCC 24-116 was adopted, unless and until the Wireline Competition Bureau adopts network performance testing methodologies and non-compliance measures that account for unique aspects of Alaska.

(iii) Recipients of Fixed ACF support shall be subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in § 54.320(a) through (c).

(iv) Recipients of Fixed ACF support shall be subject to the non-compliance measures set forth in § 54.320(d).

(k) ***Cybersecurity and Supply Chain Risk Management Requirements.***

(1) A Fixed ACF carrier shall implement operational cybersecurity and supply chain risk management plans meeting the requirements of this section by January 1, 2029.

(2) A Fixed ACF carrier shall certify that it has implemented plans required under paragraph (k)(1) of this section and submit the plans to the Administrator by January 2, 2029 or within 30 days of approval under the Paperwork Reduction Act, whichever is *later*.

(3) Fixed ACF carriers that fail to comply with the requirements set forth in paragraphs (k)(1) and (2) are subject to the following non-compliance measures:

(i) The Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the Fixed ACF carrier's monthly support for failure to comply with paragraph (k)(2) of this section until the carrier makes the required certification and submits the required plans.

(ii) At any time during the support term, if a Fixed ACF carrier does not have in place operational cybersecurity and supply chain risk management plans meeting the requirements of this section, the Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the carrier's monthly support.

(iii) Once the carrier comes into compliance, the Administrator shall stop withholding support, and the carrier will receive all of the support that had been withheld pursuant to this section.

(4) A Fixed ACF carrier's cybersecurity risk management plans shall reflect at least the National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity v.1.1.1 (2018) (NIST Framework), or any successor version of the NIST Framework, and must reflect established cybersecurity best practices that address each of the Core Functions described in the NIST Framework, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives (CISA CPGs) or the Center for Internet Security Critical Security Controls (CIS Controls).

(5) A Fixed ACF carrier's supply chain risk management plans shall reflect the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161.

(6) If a Fixed ACF carrier makes a substantive modification to its plans under this section, the carrier shall file an updated plan with the Administrator within 30 days of making the modification. A modification to a plan under this section is substantive if at least one of the following conditions apply:

(i) There is a change in the plan's scope, including any addition, removal, or significant alternation to the types of risks covered by the plan (e.g., expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);

(ii) There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);

(iii) There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);

(iv) There is a shift in the threat landscape prompting the organization to recognize the emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;

(v) Any updates are made to comply with new cybersecurity regulations, standards, or

laws;

(vi) Significant changes are made in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or

(vii) Any large-scale technological change is made, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

(l) **Other Requirements.** Reserved.

§ 54.2102 Phase Down Support for Alaska Connect Fund Transition

(a) **Support Amounts.** Beginning in January 2029, a carrier that receives support during ACF Transition and is not eligible for Fixed ACF support or will receive less Fixed ACF support than during ACF Transition, will receive the following high-cost support in addition to its Fixed ACF support, as applicable:

(i) The first 12 months (2029), the carrier will receive 60% of the difference between ACF Transition and Fixed ACF support;

(ii) The second 12 months (2030), the carrier will receive 30% of the difference between ACF Transition and Fixed ACF support;

(iii) The third 12 months (2031), the carrier will receive 15% of the difference between ACF Transition and Fixed ACF support;

(iv) Thereafter, the carrier will receive whatever, if any, Fixed ACF support for the remainder of the support term.

(b) **Reporting Obligations, Compliance and Recordkeeping.** The Wireline Competition Bureau shall determine necessary reporting, compliance and recordkeeping requirements in connection with phase down support.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Alaska Connect Fund et al., Notice of Proposed Rulemaking (Notice)* released in October 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Order

2. In the Order, the Commission adopts several changes to the Commission's rules that will implement a two-phased mechanism to provide universal service high-cost support to carriers in Alaska for the next ten years under the Alaska Connect Fund. The Commission has recognized the inherent challenges in serving these areas of Alaska and understands the necessity in providing innovative solutions and unique accommodations to residents and businesses alike. The Commission also recognizes that there are areas of Alaska that still lack high-quality affordable broadband, where residents may be deprived of the opportunity to keep up with the advancements in technology that Americans living elsewhere benefit from. Currently, the Commission provides high-cost support to Alaska Plan fixed and mobile carriers, Alaska Communications Systems (ACS), and Alternative Connect America Cost Model (A-CAM) carriers. In the *2016 Alaska Plan Order*,⁴ the Commission stated that it would conduct a rulemaking prior to the close of the 10-year support term to determine whether and how support would be provided after the end of the 10-year support term, and that the Commission would consider adjustments for marketplace changes and the realities of the current time. In the *ACS Order*,⁵ the Commission stated that it would conduct a rulemaking in year eight of the program to determine how support would be awarded for the areas at the conclusion of the program. In the Order, the Commission adopts rules to structure and target Alaska Connect Fund support.

3. In the fixed portion of the ACF Transition, the program adopted in the Order adjusts current support and extends support to current support recipients through 2028. In Fixed ACF, the Commission directs support for the maintenance and operations of already-built infrastructure through 2034. The Commission directs the Wireline Competition Bureau (WCB) to adopt a process for allocating support under Fixed ACF. Adopting this program structure now will allow for a streamlined transition from the current support mechanisms to the Alaska Connect Fund. Adopting the budget now also provides predictability to carriers in Alaska that are interested in applying for and coordinating funding from multiple federal agencies. Delegating Fixed ACF allocation and processes for fixed services to WCB allows the Commission to better meet its goal of using Universal Service Fund (USF) support effectively, allowing time for developing a fuller picture of how Broadband Equity, Access, and Deployment (BEAD) funding will be allocated in Alaska, and thus preserving the flexibility to determine how to effectively use high-cost support in Alaska to support broadband access for Alaskan consumers.

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law No. 104-121, 110 Stat. 857 (1996).

² *Alaska Connect Fund*, WC Docket No. 23-328, Order, FCC 23-87 (October 2023) (*Alaska Connect Fund Notice*).

³ 5 U.S.C. § 604.

⁴ *Connect America Fund—Alaska Plan, et al.*, WC Docket Nos. 16-271, 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*).

⁵ *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086 (2016) (*ACS Order*).

4. In the mobile portion of the Order, the Commission adopts a two-area solution for the Alaska Connect Fund mobile support in high-cost areas through December 31, 2034, extending support for previous recipients of high-cost mobile support in Alaska that opt in to receive the Alaska Connect Fund, subject to conditions. For areas with a single supported provider, support received by that provider will be extended through December 31, 2034, with limited exceptions and conditioned on improved performance plans consistent with Broadband Data Collection (BDC) data. For duplicate-support areas, or areas covered by two or more Alaska Plan mobile-provider participants, we adopt a 2-phased approach: an Alaska Connect Fund Mobile Phase I (ACF Mobile Phase I) that extends support for the mobile providers receiving support in these duplicate-support areas through December 31, 2029, and an Alaska Connect Fund Mobile Phase II (ACF Mobile Phase II), the mechanics of which the Commission seeks comment in the *Further Notice of Proposed Rulemaking* following the *Order*. The *Order* delegates to WTB the authority to extend ACF Mobile Phase I as needed, or until December 31, 2034, in the event that a ACF Mobile Phase II is not implemented.

5. This framework allows for a period of certainty of support so that the mobile-provider participants of the Alaska Plan can continue network planning and making contractual arrangements in the short term, thereby continuing to build on the progress and momentum of the Alaska Plan.

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 response to 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 of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.⁶ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

⁶ *Id.* § 604(a)(3).

⁷ *Id.* § 604 (a)(4).

⁸ *Id.* § 601(6).

⁹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ 15 U.S.C. § 632.

9. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹¹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹² These types of small businesses represent 99.9% of all businesses in the United States which translates to 33.2 million businesses.¹³

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁵ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁶

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ U.S. Census Bureau data from the 2022 Census of Governments¹⁸ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number, there were

¹¹ 5 U.S.C. § 601(3)-(6).

¹² See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹³ *Id.*

¹⁴ 5 U.S.C. § 601(4).

¹⁵ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁶ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁷ 5 U.S.C. § 601(5).

¹⁸ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁹ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

36,845 general purpose governments (county,²⁰ municipal, and town or township²¹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²²) with enrollment populations of less than 50,000.²³ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁴

12. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁵ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁸

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁹ U.S. Census Bureau data for 2017 show that there

²⁰ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²¹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²² See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²³ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁴ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁵ U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

²⁹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.³⁰ Of this number, 2,964 firms operated with fewer than 250 employees.³¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.³² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³⁴ is the closest industry with an SBA small business size standard.³⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁸ Of this number, 2,964 firms operated with fewer than 250 employees.³⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.⁴⁰ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

³⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

³¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³³ *Id.*

³⁴ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁵ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁶ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁷ *Id.*

³⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴¹ *Id.*

15. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴² is the closest industry with an SBA small business size standard.⁴³ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁷ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁸ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

16. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁹ Wired Telecommunications Carriers⁵⁰ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵² Of this number, 2,964 firms operated with fewer than 250 employees.⁵³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local

⁴² U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴³ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁴ *Id.*

⁴⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁸ *Id.*

⁴⁹ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁵⁰ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵¹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

exchange service providers.⁵⁴ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁶ is the closest industry with a SBA small business size standard.⁵⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁶¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

18. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁶² The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁶³ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁶ U.S. Census Bureau data for 2017

⁵⁴ 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>.

⁵⁵ *Id.*

⁵⁶ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁷ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁸ *Id.*

⁵⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶² U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

show that 1,386 firms in this industry provided resale services for the entire year.⁶⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁶⁹ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁷⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁷¹ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷² Mobile virtual network operators (MVNOs) are included in this industry.⁷³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁷ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do

⁶⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁰ *Id.*

⁷¹ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁸ *Id.*

not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁹ is the closest industry with a SBA small business size standard.⁸⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸² Of this number, 2,964 firms operated with fewer than 250 employees.⁸³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸⁴ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸⁶ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁷ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁸ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁹ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁹⁰ Of that number, 1,375 firms operated with fewer than 250 employees.⁹¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of

⁷⁹ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁰ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸¹ *Id.*

⁸² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁸³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁵ *Id.*

⁸⁶ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁹⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁹² Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁹⁴ private-operational fixed,⁹⁵ and broadcast auxiliary radio services.⁹⁶ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁷ Millimeter Wave Service (70/80/90 GHz),⁹⁸ Local Multipoint Distribution Service (LMDS),⁹⁹ the Digital Electronic Message Service (DEMS),¹⁰⁰ 24 GHz Service,¹⁰¹ Multiple Address Systems (MAS),¹⁰² and Multichannel Video Distribution and Data Service (MVDDS),¹⁰³ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰⁴ Wireless Telecommunications Carriers (except Satellite)¹⁰⁵ is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁷ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁸ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

⁹² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹³ *Id.*

⁹⁴ 47 CFR Part 101, Subparts C and I.

⁹⁵ *Id.* Subparts C and H.

⁹⁶ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹⁷ 47 CFR Part 30.

⁹⁸ 47 CFR Part 101, Subpart Q.

⁹⁹ *Id.* Subpart L.

¹⁰⁰ *Id.* Subpart G.

¹⁰¹ *Id.*

¹⁰² *Id.* Subpart O.

¹⁰³ *Id.* Subpart P.

¹⁰⁴ 47 CFR §§ 101.533, 101.1017.

¹⁰⁵ U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰⁶ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

23. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁹

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹¹⁰ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.¹¹¹ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹¹² The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹¹³ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹¹⁴ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.¹¹⁵ Based on this data, the Commission estimates that a majority of firms in this industry are small.

¹⁰⁹ 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹¹⁰ U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹¹⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

¹¹⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

26. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹¹⁶ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁷ Of these, only seven have more than 400,000 subscribers.¹¹⁸ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹⁹ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹²⁰ Of these, about 639 have more than 15,000 subscribers.¹²¹ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

27. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹²² For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹²³ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹²⁴ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹²⁵ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

28. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and

¹¹⁶ 47 CFR § 76.901(d).

¹¹⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹⁹ 47 CFR § 76.901(c).

¹²⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹²¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023).

¹²² 47 U.S.C. § 543(m)(2).

¹²³ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 *Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

¹²⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹²⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

television broadcast and wireless communications equipment.¹²⁶ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹²⁷ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁸ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁹ Of this number, 624 firms had fewer than 250 employees.¹³⁰ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

29. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹³¹ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.¹³² U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹³³ Of this number, 242 firms had revenue of less than \$25 million.¹³⁴ 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.¹³⁵ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹³⁶ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

30. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.¹³⁷ Establishments in this industry have spectrum licenses and provide

¹²⁶ U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”*
<https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹²⁷ *Id.*

¹²⁸ 13 CFR § 121.201, NAICS Code 334220.

¹²⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220,
<https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹³⁰ *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.

¹³¹ U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”*
<https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹³² 13 CFR § 121.201, NAICS Code 517410.

¹³³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREFirm, NAICS Code 517410,
<https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREFirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹³⁴ *Id.*

¹³⁵ 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>.

¹³⁶ *Id.*

services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.¹³⁸ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁴⁰ Of that number, 2,837 firms employed fewer than 250 employees.¹⁴¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.¹⁴² Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹⁴³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

31. *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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁴⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴⁹ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

(Continued from previous page)

¹³⁷ U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁸ *Id.*

¹³⁹ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁴⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁴² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁴³ *Id.*

¹⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFI, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁴⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

32. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹⁵⁰ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁵¹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹⁵² The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹⁵³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁵⁴ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁵⁵

33. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹⁵⁶ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,¹⁵⁷ we believe that the majority of wireline Internet access service providers can be considered small entities.

34. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*¹⁵⁸ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the

¹⁵⁰ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹⁵¹ 47 CFR § 1.7001(a)(1).

¹⁵² U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁵³ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁵⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁵⁵ *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.

¹⁵⁶ See Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁵⁷ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

¹⁵⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

Internet[.]”¹⁵⁹ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.¹⁶⁰ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁶¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁶² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁶³ Of that number, 2,837 firms employed fewer than 250 employees.¹⁶⁴

35. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁶⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, based on data in the Commission’s *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁶⁶ as well as on terrestrial fixed wireless broadband providers in general,¹⁶⁷ we believe that the majority of wireless Internet access service providers can be considered small entities.

36. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁶⁸ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁶⁹ For this industry, U.S. Census Bureau data for 2017

¹⁵⁹ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

¹⁶⁰ 47 CFR § 1.7001(a)(1).

¹⁶¹ U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁶² 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶³ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁶⁴ *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.

¹⁶⁵ *IAS Status 2019*, Fig. 30.

¹⁶⁶ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁶⁷ *Id.* at 8, para. 22.

¹⁶⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁶⁹ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

show that there were 1,079 firms in this industry that operated for the entire year.¹⁷⁰ Of those firms, 1,039 had revenue of less than \$25 million.¹⁷¹ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

37. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁷² The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹⁷³ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁷⁴ Of those firms, 556 had revenue of less than \$25 million.¹⁷⁵ Consequently, we estimate that the majority of firms in this industry are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

38. Small and other recipients of ACF Transition support for fixed services are already subject to the reporting obligations set forth in sections 54.313, 54.314, and 54.316 of the Commission's rules, which include broadband deployment reporting and certification requirements for high-cost recipients, and are subject to requirements in sections 54.9, 54.10, and 54.11 of the Commission's rules, which include prohibited uses of funds. Small and other recipients of Fixed ACF support are also subject to the reporting obligations set forth in sections 54.313, 54.314, and 54.316 of the Commission's rules, and are subject to requirements in 54.9, 54.10, and 54.11 of the Commission's rules.

39. WCB may adopt network performance testing methodologies and non-compliance measures that account for unique aspects of service in Alaska. Until WCB adopts such methodologies, recipients of Fixed ACF shall comply with methodologies and non-compliance measures in effect as of the date this order was adopted.

40. Consistent with the cyber requirements in the Enhanced Alternative-Connect America Cost Model (Enhanced A-CAM) and BEAD programs, the Commission requires small and other Fixed ACF support recipients to implement operational cybersecurity and supply chain risk management plans

¹⁷⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 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.

¹⁷¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁷² U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁷³ 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁷⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁷⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

and certify that they have been submitted to USAC by January 1, 2029. We do not expect that implementing these plans will be expensive or time consuming for small providers because they are appropriately tailored to mitigate burdens on small entities while maintaining the integrity of our nation's networks. The Commission allows providers the flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs. We expect that our approach will reduce compliance costs by allowing carriers that have already implemented the NIST Framework for Improving Critical Infrastructure Cybersecurity to comply with this requirement without revising their plan so long as they implement an established set of cybersecurity best practices. Small Fixed ACF recipients may take advantage of existing federal government and other online resources to facilitate the creation of cybersecurity and supply-chain risk management plans.

41. Small and other recipients of Fixed ACF support are subject to the compliance measures, recordkeeping requirements, and audit requirements for high-cost program recipients set forth in section 54.320(a)-(c) of the Commission's rules. Small and other recipients of Fixed ACF support are also subject to the non-compliance measures set forth in section 54.320(d) of the Commission's rules, which includes notifying the Commission, Universal Service Administrative Company (USAC), and relevant state, territory, and Tribal governments of any failure to meet build-out milestones.

42. The mobile section of the *Order* adopts public interest obligations, performance requirements, and reporting and certification requirements for small and other mobile participants of the Alaska Connect Fund. Eligible participants are initially limited to existing mobile participants of the Alaska Plan. As with the Alaska Plan, the Alaska Connect Fund participants are required to submit performance plans, which must be filed for Wireless Telecommunications Bureau (WTB) approval no later than September 1, 2026. Mobile Alaska Connect Fund performance plans are required to be based on the BDC standards and coverage as of December 31, 2024. The performance plans must be at the census tract level, and must: (1) include the name of the census tract that the provider commits to serve; (2) include the minimum technology level and speed in an outdoor stationary environment that the provider commits to provide; (3) specify the number of hex-9s committed to be covered within each census tract at the committed-to technology and speed levels, which shall be no less than the provider's coverage in the Alaska Plan, minus any ineligible areas; and (4) specify how many additional hex-9s committed to within each census tract at the committed-to technology and speed levels are comparable hex-9s. The Commission delegates authority to WTB to adopt requirements and develop data specifications, after appropriate public process, concerning the format and method of uploading the performance plans. Mobile participants must certify that they have met the obligations in their performance plans no later than 60 days after the end of their commitment deadlines. Those Alaska Connect Fund mobile recipients that receive annual support of more than \$5 million must submit with their certification data conforming to the BDC Data Specifications for Mobile Speed Test Data received or used from speed tests analyzing network coverage for mobile service covering the hex-9s for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds in the approved performance plan.

43. Small and other mobile participants are required to continue to meet all of the public interest obligations of the Alaska Plan, including minimum provision of service and reasonably comparable services and rates. Where WTB approves lesser commitments in a provider's performance plan, the mobile provider must certify, by census tract, that the basis for which it qualified for lesser commitments still applies in the previous calendar year and to describe on its FCC Form 481 the efforts it has taken to improve conditions that served as the basis for the lesser commitments. When the basis for the lesser commitments has changed in the previous calendar year, allowing the minimum commitments to be achieved in the census tract, the mobile provider must certify to this in FCC Form 481. Where a provider certifies on FCC Form 481 that conditions have changed such that it no longer qualifies for lesser commitments in a census tract, the provider must submit additional information and updated performance plans into the Alaska Connect Fund docket. Where conditions have changed, the mobile provider must submit, for the affected census tracts: (i) a description of the change; (ii) the date on which the change occurred; (iii) the hex-9s within the census tract that could be served as a result of the changed

conditions; and (iv) revised performance commitments factoring in the change. These filings must be made simultaneously with the submission of the FCC Form 481.

44. Additionally, similar to the compliance obligations for fixed providers mentioned above, all mobile providers must implement operational cybersecurity and supply chain risk management plans by December 31, 2029 or within 30 days after approval under the Paperwork Reduction Act, whichever is later. Plans must be submitted to USAC, WTB, and the Public Safety and Homeland Security Bureau (PSHSB) by December 31, 2029; and must reflect established cybersecurity best practices that address each of the Core Functions described in the NIST Framework, such as the standards and controls set forth in the CISA CPGs or the CIS Controls. The Commission delegates authority to WTB in consultation with PSHSB to update these requirement through notice and comment process.

45. Alaska Connect Fund mobile providers are also required to submit information about all backhaul and middle mile, regardless of technology, and the name of the middle mile provider(s) from which the last-mile Alaska Connect Fund mobile provider leases links.¹⁷⁶ Providers will be allowed but not required to submit data regarding the price the provider pays per Mbps along each link.

46. In addition, small and other recipients of Alaska Connect Fund support for mobile services shall continue to be subject to the reporting obligations set forth in sections 54.308, 54.313, 54.314, 54.320(d), 54.321 of the Commission's rules, as amended, section 54.318, and be subject to the requirements in sections 54.9, 54.10, and 54.11 of the Commission's rules. Such recipients are also required to submit on an annual basis all of the infrastructure data that providers would submit as part of the BDC mobile verification process for all cell sites and antennas that serve an Alaska Connect Fund mobile support recipient's supported area for coverage as of December 31 of each year. These Alaska Connect Fund recipients of mobile support must submit these data to WTB by the following March 1 based on their instructions and specifications.

47. The record does not provide sufficient information to allow the Commission to determine whether small entities will be required to hire professionals to comply with many of these decisions. The Commission anticipates the approaches it has taken to implement the requirements will have minimal cost implications because we expect that much of the required information is already collected to ensure compliance with the terms and conditions of support for other high-cost programs.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

48. 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."¹⁷⁷

49. In reaching its final conclusions and through its actions in this proceeding, the Commission has considered the economic impact of, and alternatives to, proposals that may affect small entities. The rules that we adopt in the *Order* will benefit small and other entities by balancing our requirement to provide support that is sufficient to achieve the Commission's universal service goals, while also providing appropriate incentives for prudent and efficient expenditures. We adopt a two-phase Alaska Connect Fund, in which ACF Transition support increases current funding and extends funding to harmonize the end point of multiple current funding programs, providing certainty and increased funding for current recipients, including small entities. We considered alternatives for raising support amounts annually, but declined this approach to ensure certainty and predictability in funding for carriers. Fixed

¹⁷⁶ See, e.g., *Alaska Network-Mapping Order*, 33 FCC Rcd at 2081-87, Appx. (providing instructions for filing fiber and microwave networks and middle mile information).

¹⁷⁷ 5 U.S.C. § 604(a)(6).

ACF will establish a future funding mechanism to support the continued provision of broadband services in Alaska by all providers, including small entities. For mobile providers, the *Order* adopts a two-area solution, extending support with updated performance obligations for single-support areas, while considering alternatives for and extending support for areas with duplicate support in the short term, and seeking comment on the appropriate methodology for eliminating duplicative support for these areas in the *Further Notice of Proposed Rulemaking*. The updated support system will improve upon the successes of the Alaska Plan while addressing many concerns that diminished providers' efficient use of their support to serve their existing networks and expand their coverage areas. As the majority of the eligible participants for ACF extended support meet fall under the SBA size standard for small businesses as wireless telecommunications carriers, the adopted system was inherently designed with consideration to those entities.

50. We considered alternatives raised by commenters to eliminate the requirement that providers must be an Eligible Telecommunications Carrier (ETC), consistent with the existing rules, to be eligible to receive Alaska Connect Fund support, but instead retain this requirement for statutory reasons. Some commenters expressed concerns that requiring cybersecurity and risk management plans may be too costly and burdensome for small rural carriers. As discussed in section E above, the rules provide flexibility for small providers to design these plans and various resources are available to reduce the cost of developing these plans. Further, the cybersecurity and risk management compliance obligations are similar to those for existing support programs and necessary to maintain the integrity of our nation's networks.

51. To the extent we retain certification and reporting requirements, we find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on small and other entities, particularly because much of the information that we require them to report is information we expect they already collect to ensure they comply with the existing terms and conditions of support.

G. Report to Congress

52. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹⁷⁸ In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁷⁹

¹⁷⁸ 5 U.S.C. § 801(a)(1)(A).

¹⁷⁹ See *id.* § 604(b).

APPENDIX C

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 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 for comments provided on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Further Notice*, the Commission seeks comment on several issues pertaining to the implementation of the Alaska Connect Fund (ACF). In doing so, we continue to work towards our objectives of providing service to rural and high-cost areas of Alaska, which historically are some of the most difficult and costliest areas to serve in the country and where many residents continue to lack access to the high-quality, affordable broadband service enjoyed by other parts of our nation. Specifically, we seek comment on ACF Mobile Phase II service goals or requirements, as well as on a methodology to determine a single support amount for areas where more than one provider had been receiving support for overlapping service areas, as well as for use in determining support amounts for areas that we deem ineligible in the *Order*. Additionally, we seek comment on how to resolve duplicative funding so that only one provider would continue receiving support in the area, in particular proposing two possible mechanisms to address this issue. Further comment is also sought to update the record on how best to deploy service to unserved areas using the approximately \$162 million collected from the Alaska Plan. Finally, the Commission seeks comment on additional issues, such as retail consumer conditions, Open RAN, and Tribal consent under the Alaska Connect Fund. In further developing the record in this proceeding, we rely on the experiences of carriers with operations in Alaska, many of which are small business entities, to build a record on how best to implement the ACF.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 205, 214, 254, 303(r), 403, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR §§ 1.1, 1.421.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the

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 *Id.* § 603(b)(3).

⁵ *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.”⁶ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2022 Census of Governments¹⁵ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,845 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts¹⁹) with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²¹

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²² Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²³ By exception, establishments providing satellite television distribution services using facilities

¹⁴ 5 U.S.C. § 601(5).

¹⁵ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁶ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²⁰ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²³ *Id.*

and infrastructure that they operate are included in this industry.²⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁵

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁷ Of this number, 2,964 firms operated with fewer than 250 employees.²⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.²⁹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³¹ is the closest industry with an SBA small business size standard.³² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³³ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁵ Of this number, 2,964 firms operated with fewer than

²⁴ *Id.*

²⁵ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

²⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

³⁰ *Id.*

³¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³³ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁴ *Id.*

³⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

250 employees.³⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.³⁷ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers³⁹ is the closest industry with an SBA small business size standard.⁴⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴² Of this number, 2,964 firms operated with fewer than 250 employees.⁴³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁴ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁵ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁶

(Continued from previous page)

<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁸ *Id.*

³⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴¹ *Id.*

⁴² See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁵ *Id.*

⁴⁶ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

Wired Telecommunications Carriers⁴⁷ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.⁵¹ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵³ is the closest industry with a SBA small business size standard.⁵⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁵⁸ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

⁴⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵² *Id.*

⁵³ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁵ *Id.*

⁵⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

14. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁵⁹ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁶⁰ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶¹ Mobile virtual network operators (MVNOs) are included in this industry.⁶² The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶³ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁴ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁵ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁶⁶ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁶⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁶⁸ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁹ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁰ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2017

⁵⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁷ *Id.*

⁶⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

show that 1,386 firms in this industry provided resale services for the entire year.⁷² Of that number, 1,375 firms operated with fewer than 250 employees.⁷³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁴ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁶ is the closest industry with a SBA small business size standard.⁷⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸¹ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁷⁵ *Id.*

⁷⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁸ *Id.*

⁷⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁸² *Id.*

Resellers⁸³ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁶ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁸⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁸⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁸⁹ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁹¹ private-operational fixed,⁹² and broadcast auxiliary radio services.⁹³ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁴ Millimeter Wave Service (70/80/90 GHz),⁹⁵ Local Multipoint Distribution Service (LMDS),⁹⁶ the Digital Electronic Message Service (DEMS),⁹⁷ 24 GHz Service,⁹⁸

⁸³ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁸⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁹⁰ *Id.*

⁹¹ See 47 CFR Part 101, Subparts C and I.

⁹² See *id.* Subparts C and H.

⁹³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹⁴ See 47 CFR Part 30.

⁹⁵ See 47 CFR Part 101, Subpart Q.

⁹⁶ See *id.* Subpart L.

⁹⁷ See *id.* Subpart G.

Multiple Address Systems (MAS),⁹⁹ and Multichannel Video Distribution and Data Service (MVDDS),¹⁰⁰ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰¹ Wireless Telecommunications Carriers (*except Satellite*)¹⁰² is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁵ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

19. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁶

20. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁰⁷ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce

(Continued from previous page) _____

⁹⁸ See *id.*

⁹⁹ See *id.* Subpart O.

¹⁰⁰ See *id.* Subpart P.

¹⁰¹ See 47 CFR §§ 101.533, 101.1017.

¹⁰² See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁰⁵ *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.

¹⁰⁶ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁰⁷ See U.S. Census Bureau, 2017 NAICS Definition, "515210 Cable and Other Subscription Programming," <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

programming in their own facilities or acquire programming from external sources.¹⁰⁸ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁰⁹ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹¹⁰ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹¹¹ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.¹¹² Based on this data, the Commission estimates that a majority of firms in this industry are small.

22. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹¹³ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁴ Of these, only seven have more than 400,000 subscribers.¹¹⁵ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹⁶ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹¹⁷ Of these, about 639 have more than 15,000 subscribers.¹¹⁸ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

23. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹¹¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category). At this time, the 2022 Economic Census data is not available.

¹¹² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹¹³ 47 CFR § 76.901(d).

¹¹⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹¹⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹⁶ 47 CFR § 76.901(c).

¹¹⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹¹⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

\$250,000,000.”¹¹⁹ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹²⁰ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹²¹ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹²² Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹²³ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹²⁴ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁵ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁶ Of this number, 624 firms had fewer than 250 employees.¹²⁷ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

25. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or

¹¹⁹ 47 U.S.C. § 543(m)(2).

¹²⁰ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 *Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

¹²¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹²² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR § 76.910(b).

¹²³ See U.S. Census Bureau, 2017 *NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹²⁴ *Id.*

¹²⁵ See 13 CFR § 121.201, NAICS Code 334220.

¹²⁶ See U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220

¹²⁷ *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.

reselling satellite telecommunications.”¹²⁸ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$44 million or less in annual receipts as small.¹²⁹ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹³⁰ Of this number, 242 firms had revenue of less than \$25 million.¹³¹ 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.¹³² Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹³³ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

26. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.¹³⁴ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.¹³⁵ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹³⁷ Of that number, 2,837 firms employed fewer than 250 employees.¹³⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.¹³⁹ Of these providers, the Commission estimates that 511 providers have 1,500 or

¹²⁸ See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹²⁹ See 13 CFR § 121.201, NAICS Code 517410.

¹³⁰ 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.

¹³¹ *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.

¹³² 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>.

¹³³ *Id.*

¹³⁴ See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite),”* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁵ *Id.*

¹³⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹³⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

fewer employees.¹⁴⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *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.¹⁴¹ 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.¹⁴² 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.¹⁴³ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁴⁴ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴⁵ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴⁶ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

28. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹⁴⁷ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁴⁸ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹⁴⁹ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹⁵⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁵¹ Of this number, 2,964

¹⁴⁰ *Id.*

¹⁴¹ See U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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.

¹⁴⁷ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹⁴⁸ See 47 CFR § 1.7001(a)(1).

¹⁴⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁵⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁵¹ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

firms operated with fewer than 250 employees.¹⁵²

29. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹⁵³ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,¹⁵⁴ we believe that the majority of wireline Internet access service providers can be considered small entities.

30. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.¹⁵⁵ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹⁵⁶ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁵⁷ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁵⁸ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁶⁰ Of that number, 2,837 firms employed fewer than 250 employees.¹⁶¹

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<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁵² *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.

¹⁵³ See Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁵⁴ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

¹⁵⁵ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹⁵⁶ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

¹⁵⁷ See 47 CFR § 1.7001(a)(1).

¹⁵⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312,

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31. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁶² The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁶³ as well as on terrestrial fixed wireless broadband providers in general,¹⁶⁴ we believe that the majority of wireless Internet access service providers can be considered small entities.

32. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁶⁵ The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small.¹⁶⁶ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁶⁷ Of those firms, 1,039 had revenue of less than \$25 million.¹⁶⁸ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

33. *All Other Information Services*. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁶⁹ The SBA small business size standard for this industry classifies firms with annual receipts of \$47 million or less as small.¹⁷⁰ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁷¹ Of those

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<https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁶¹ *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.

¹⁶² See *IAS Status 2019*, Fig. 30.

¹⁶³ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁶⁴ *Id.* at 8, para. 22.

¹⁶⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁶⁶ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁶⁷ 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.

¹⁶⁸ *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.

¹⁶⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "519190 All Other Information Services," <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁷⁰ See 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

firms, 556 had revenue of less than \$25 million.¹⁷² Consequently, we estimate that the majority of firms in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

34. Potential rules resulting from comments in the *Further Notice*, could impose new or additional recordkeeping and reporting requirements for small and other entities, if adopted. Specifically, in the *Further Notice* the Commission seeks comment on a number of issues related to the implementation of the Alaska Connect Fund. For example, the *Further Notice* seeks comment on setting a minimum goal of deployment of 5G-NR 7/1 Mbps for all mobile providers participating in ACF Mobile Phase II, as well as whether any exemptions should be made for certain areas. Under the competitive mechanism, providers seeking to participate would submit proposals including coverage maps for the areas where more than one provider currently receives support, as well as the surrounding community where no provider or only a single provider may currently offer service. The coverage map would comply with Broadband Data Collection (BDC) mobile coverage data requirements and would predict 5G-NR coverage in an outdoor stationary environment. An eligible telecommunications carrier (ETC) may propose to cover a tract with 5G-NR 7/1 Mbps service or 5G-NR 35/3 Mbps service, but separate coverage maps must be submitted for each proposed service. For the alternative mechanism, we seek comment on whether to set a minimum goal of deployment for support under ACF Mobile Phase II of 5G-NR 7/1 Mbps measured in an outdoor stationary environment.

35. Additionally, the Commission seeks comment on an auction mechanism to distribute the \$162 million in reallocated Alaska Plan funding to support the provision of mobile service in unserved remote areas. We seek comment on the public interest obligations and standards (with respect to technology, speed, geographic coverage, and timing) that a winning bidder would have under the auction mechanism. Rules adopted as a result of the comments received could lead to new or additional compliance requirements for small and other entities.

36. The *Further Notice* also seeks comment on whether all ACF mobile providers receiving support should have a minimum of five mobile data subscribers per census designated place and must be able to provide proof of those subscribers upon request by the Wireless Telecommunications Bureau (WTB), starting with the due date of their first milestone. Providers that are unable to provide address-level data of these subscribers upon demand may have a proportional amount of funding withheld as a result of not having effective service in the area. Further, providers may not take more than 14 days to satisfy any subscribership requests by WTB. In addition, in order to comply with the Tribal consultation requirements of the Commission's rules, we seek comment on whether each provider should (1) publicly post its service offering that is compliant with section 54.308(d), including on its website at a visible, physical location within each census designated place it intends to serve and (2) with information regarding how someone can begin to subscribe to the service. Finally, we seek comment on whether the

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¹⁷¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹⁷² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

Commission should require that an applicant seeking ACF mobile support to deploy greenfield facilities to provide mobile wireless service on Tribal lands submit a certification of consent to serve from the Tribal government(s) whose land(s) they seek to deploy mobile networks on with ACF Support. The proposed certification would include the signature of the appropriate official of the Tribal government and their title; statement that the Tribal government has not and will not enter into an exclusive contract with the applicant to preclude entry by other carriers and will not unreasonably discriminate among wireless carriers seeking to provide service on the eligible Tribal land; and a statement that the Tribal government will, as applicable, permit the applicant to locate and deploy facilities on the Tribal land consistent with the 5G Fund public interest obligations and performance requirements. Comment is also sought on any additional or different Tribal engagement requirements to comply with section 54.313(a)(5) of the Commission's rules.

37. We further note that if the approaches on which we seek comment in the *Further Notice* are adopted, small and other recipients of ACF Phase II support for mobile services shall be subject to the reporting and compliance obligations set forth in sections 54.308, 54.313, 54.314, 54.320(d), 54.321 of the Commission's rules, as amended, and be subject to the prohibitions and requirements in sections 54.9, 54.10, and 54.11 of the Commission's rules applicable to all recipients of universal service high-cost support. At this time, the Commission is not in a position to determine whether, if adopted, the matters upon which we seek comment will require small entities to hire attorneys, engineers, consultants, or other professionals in order to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. However, the Commission anticipates the approaches we ultimately take to implement the requirements of any potential rules, if adopted, will have minimal cost implications as we expect much of the required information is currently collected by providers to ensure compliance with existing Commission rules, thereby minimizing the compliance burden on small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

38. 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."¹⁷³

39. Through the approaches we seek comment on in the *Further Notice*, including those related to the implementation of ACF Mobile Phase II, the Commission takes steps to support the advancement of modern broadband service in Alaska while seeking to minimize the economic impact on small entities. In addition, we consider significant alternatives by seeking comment on alternative approaches designed to balance our requirement to provide support that is sufficient to achieve the Commission's universal service goals, while also providing appropriate incentives for prudent and efficient expenditures. For example, in the *Further Notice*, we took the step of seeking comment on specific deployment goals or obligations for Phase II of the ACF for mobile-provider participants that receive support, such as seeking comment on whether to make 5G-NR 7/1 Mbps the minimum standard deployment goal or to make it a requirement. Alternatively, we seek comment in areas that could impact the bottom lines of small entities, such as how much time should carriers be given to upgrade their networks to meet the new minimum performance goal, or whether the adopted minimum deployment goal should evolve over time to a higher standard so that it does not become outdated. To address the potential economic concerns of small entities, the Commission could adopt rules that would give small entities

¹⁷³ 5 U.S.C. § 603(c)(1)–(4).

additional time to comply with the minimum deployment requirements. We seek comment on this issue from small entities and other interested parties.

40. The *Further Notice* also takes the step of outlining an alternative mechanism that would allow a provider to retain its funding if it provides comparable service in a nonduplicate-support area, as well as consider alternative approaches from small and other entities on how best to achieve an outcome that dovetails both the Commission's policy goals and the minimization of substantial economic impact to small entities.

41. The matters discussed in the *Further Notice* are designed to ensure the Commission has a complete understanding of both the benefits and the potential burdens associated with the different actions and methods before adopting its final rules. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions discussed in the *Further Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping, and reporting requirements described above can be minimized for small businesses. Through comments received in response to the *Further Notice* and the IRFA, including costs and benefits information and any alternative proposals, the Commission expects to more fully consider ways to minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

42. None.

APPENDIX D

ACF Program Timelines

