

**Volume 39, No. 5, Pages 3845 to 4534,
April 14 – May 6, 2024**

FCC Record

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



FCC Record

Volume 39, No. 5, Pages 3845 to 4534, April 14 – May 6, 2024



FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

Table of Contents

Volume 39

Issue 5

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

Federal Communications Commission Record

Table of Cases Volume 39 Issue 5

Case Name	Page
EB Settles With Mobile Communications For Unauthorized Transfers	3845
Pacifica Foundation, Inc., Consent Decree	3857
MB Announces Comment and Comment Reply Dates For FM Broadcast Booster FNPRM	3870
WCB Announces Certain CAF II/RDOF CBGs are Eligible for Other Funding	3871
Table of TV Allotments, Television Broadcast Stations, Jacksonville, Florida	3878
FCC Warns Providers About Student Loan Robocalls from DigitalIPvoice	3884
WCB Issues Monthly USF Appeals	3887
PSHSB, OET & WTB Issues Waiver Order Permitting C-V2X Operations in 5.9 GHz Band	3916
WCB Announces 988 Fee Accountability Report Information Collection	3927
PSHSB Announces Region 15 (IA) 700 and 800 MHz RPCs to Hold Meetings	3929
WCB Addresses Petitions for Waiver of RHC Application Filing Deadline	3931
WCB Seeks Comments on Interconnected VOIP Numbering Authorization Application Filed by TNS Transline, LLC	3938
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	3941
EB Fines AT&T \$75K for Prohibited Communications in Auction 903	3943
EB Fines AMG \$100K for Prohibited Communications in Auction 903	3953
CGB Announces Comment Dates for MEP Event Code NPRM	3969
MB Denies Tahoma Preservation's Petition for Reconsideration	3970
OEA Seeks Comments on State of Competition in Communications Marketplace	3974
OET Announces Ex Parte Status for Experimental License WW9XPI	3986
SB Grants Kuiper Modification Application to Revise ITU Filing Condition	3987
MB Announces All-In Pricing Report & Order Published in Federal Register	4002
Castelli Media, LLC, Forfeiture Order	4003
FCC Announces Tribal Consultation on May 14 in Oklahoma on Proposed MEP EAS Code	4007
PSHSB Extends Comment and Reply Dates in Outage Reporting Proceeding	4009
Table of Allotments, Television Broadcast Stations, Missoula, Montana	4011
MB Grants the Application to Assign the TV Broadcast License from Adell Broadcasting Corporation to Mission Broadcasting, Inc.	4014
MB Denies Chiloquin Order on Reconsideration	4035
PSHSB Grants Waiver for Alert SouthBay to Conduct a Second WEA Test	4043
International Authorizations Granted	4048
OIA & WTB Approves Mint/Ultra Transfer of Control to T-Mobile with Consumer Protections	4053
WCB Grants Domestic Section 214 Application	4067
Lajefa Community Radio, Dismissal Letter	4075
Alert Community Broadcasting, Dismissal Letter	4078
CGB Grants Clear Rate Slam Order	4081
PSHSB Announces Region 21 (MI) RPCs to Hold 700 and 800 MHz Meetings	4084
FCC Requests Letters of Intent for Robocall Tracebacks Consortium	4086
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	4090
OET Seeks Comment on Expanded Federal Use of Non-Federal Bands	4093
WGBH Educational Foundation, NALF	4097
MB Denies University of Wisconsin-Milwaukee's Petitions for Reconsideration	4104
MB Considers Applications of Subsidiaries of Cumulus Media, Inc.	4108
WCB Seeks Comment on Domestic 214 Transfer of Comm 1 - WebCal and WCTA	4117

Federal Communications Commission Record

Case Name	Page
FCC Announces World Radiocommunication's Conference Advisory Committee's First Meeting	4123
WCB Approves RHC's Funding Request Review Procedures	4125
WCB Grants Domestic Section 214 Authorization	4126
Small Entity Compliance Guide: Rates for Interstate Inmate Calling Services	4127
Small Entity Compliance Guide: Amendment of Part 73 of the Commission's Rules Related to Full Power Television and Class A Television Stations	4138
WCB Issues Streamlined Resolution of Reimbursement Program Term Extension Requests	4145
Selma Weather and Information Forum, Dismissal Letter	4155
WCB Grants Domestic 214 Application for Transfer of Buckland - HCI	4159
Table of FM Allotments, FM Broadcast Stations, Canadian, Texas	4161
WTB Grants South Fork Wind LLC–SAAB Waiver for AIS Aids to Navigation (AtoN)	4165
SB Seeks to Refresh Record on Orbital Debris Proposed Rules	4168
WCB Invites Comments on Section 214 Discontinuance Application(s)	4174
Tacoma Hilltop Foundation, Dismissal Letter	4178
Small Entity Compliance Guide: Updating References to Standards Related to the Commission's Equipment Authorization Program	4182
PSHSB & OET Submits Request for Information to Federal Partners on Certain Measurement Facilities	4188
Small Entity Compliance Guide: Unlicensed Use of the 6 GHz Band Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz	4189
Small Entity Compliance Guide: Implementation of the Low Power Protection Act	4193
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	4199
WCB Grants Interconnected VoIP Numbering Authorizations	4200
FCC Issues Notice of Single Network Future Prohibited Presentation	4201
City of Erie Cable TV Access Crop, Dismissal Letter	4202
WCB Updates Guidance Regarding Locations & Broadband Coverage for Enhanced Alternative Connect America Model Mechanism	4206
WCB Waives E-ACAM Rule to Facilitate Deployment in West Virginia	4210
WCB Grants Domestic Section 214 Authorization	4214
MB Announces Publication of Form 395-B Fourth Report & Order & Order on Reconsideration	4215
FCC Fines AT&T \$57M for Location Data Violations	4216
FCC Fines Verizon \$46M for Location Data Violations	4259
FCC Fines Sprint \$12M for Location Data Violations	4305
FCC Fines T-Mobile \$80M for Location Data Violations	4350
FCC Seeks to Foster Independent and Diverse Video Programming	4403
FCC Proposes Improvements for Wireless Call Routing to 988 Lifeline	4443
FCC Proposes \$597,775 Fine for PIRATE Act Violations	4486
FCC Proposes \$120,000 Fine for PIRATE Act Violations	4495
FCC Proposes \$40,000 Fine for PIRATE Act Violations	4503
FCC Proposes \$40,000 Fine for PIRATE Act Violations	4512
FCC Proposes \$40,000 Fine for PIRATE Act Violations	4519
FCC Proposes \$20,000 Fine for PIRATE Act Violations	4526
FCC Adopts Joint Boards Member Appointments Order	4533

Federal Communications Commission Record

Table of FCC and Delegated Authority Numbers Volume 39 Issue 5

DA/FCC Number	Page	DA/FCC Number	Page
DA 24-326	3845	DA 24-411	4165
DA 24-355	3857	DA 24-412	4168
DA 24-356	3870	DA 24-413	4174
DA 24-357	3871	DA 24-414	4178
DA 24-358	3878	DA 24-415	4182
DA 24-359	3884	DA 24-416	4188
DA 24-362	3887	DA 24-417	4189
DA 24-363	3916	DA 24-418	4193
DA 24-364	3927	DA 24-419	4199
DA 24-365	3929	DA 24-420	4200
DA 24-366	3931	DA 24-421	4201
DA 24-367	3938	DA 24-422	4202
DA 24-368	3941	DA 24-423	4206
DA 24-370	3943	DA 24-424	4210
DA 24-371	3953	DA 24-425	4214
DA 24-372	3969	DA 24-426	4215
DA 24-373	3970	FCC 24-40	4216
DA 24-374	3974	FCC 24-41	4259
DA 24-375	3986	FCC 24-42	4305
DA 24-376	3987	FCC 24-43	4350
DA 24-377	4002	FCC 24-44	4403
DA 24-378	4003	FCC 24-45	4443
DA 24-379	4007	FCC 24-46	4486
DA 24-380	4009	FCC 24-47	4495
DA 24-381	4011	FCC 24-48	4503
DA 24-382	4014	FCC 24-49	4512
DA 24-384	4035	FCC 24-50	4519
DA 24-385	4043	FCC 24-51	4526
DA 24-386	4048	FCC 24-53	4533
DA 24-387	4053		
DA 24-389	4067		
DA 24-390	4075		
DA 24-391	4078		
DA 24-392	4081		
DA 24-393	4084		
DA 24-394	4086		
DA 24-395	4090		
DA 24-396	4093		
DA 24-398	4097		
DA 24-399	4104		
DA 24-400	4108		
DA 24-401	4117		
DA 24-402	4123		
DA 24-403	4125		
DA 24-404	4126		
DA 24-405	4127		
DA 24-406	4138		
DA 24-407	4145		
DA 24-408	4155		
DA 24-409	4159		
DA 24-410	4161		

Federal Communications Commission Record

Table of Docket Numbers Volume 39 Issue 5

Docket Number	Page	Docket Number	Page
17-105	3870		
10-90	3871		
24-112	3878		
10-90	3887		
19-138	3916		
18-336	3927		
02-378	3929		
02-60	3931		
24-95	3938		
15-94	3969		
24-119	3974		
23-203	4002		
15-94	4007		
21-346	4009		
23-380	4011		
15-94	4043		
23-171	4053		
10-90	4067		
02-378	4084		
20-22	4086		
24-121	4093		
24-48	4117		
24-30	4123		
02-60	4125		
24-31	4126		
12-375	4127		
22-227	4138		
18-89	4145		
24-57	4159		
24-111	4161		
18-313	4168		
24-122	4174		
21-363	4182		
17-183	4189		
23-126	4193		
23-310	4200		
23-65	4201		
10-90	4206		
10-90	4210		
24-43	4214		
98-204	4215		
24-115	4403		
18-336	4443		
96-45	4533		

Federal Communications Commission Record

Table of Rulemaking Numbers

Volume 39

Issue 5

Rulemaking Number	Page	Rulemaking Number	Page
RM-11981	3878		
RM-11968	4011		
RM-11980	4161		

Federal Communications Commission Record

Table of Localities

Volume 39

Issue 5

City/State	Page	City/State	Page
Jacksonville, FL	3878		
Missoula, MT	4011		
Canadian, TX	4161		

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

In the Matter of

Mobile Communications America, Inc.

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File No.: EB-IHD-23-00035733

CD Acct. No.: 202432080010

FRN: 0026218487

ORDER

Adopted: April 15, 2024**Released: April 15, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Mobile Communications America, Inc. (MCA) operated a radio license without authorization and failed to seek Commission approval prior to transferring control of business radio licenses. To settle this matter, MCA admits that it violated the Commission's rules as described, will implement a compliance plan, and will pay a \$100,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding MCA's compliance with sections 301 and 310(d) of the Communications Act of 1934, as amended (Act),¹ and sections 1.903 and 1.948 of the Commission's rules (Rules).²

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

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

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

¹ 47 U.S.C. §§ 301, 310(d).

² 47 CFR §§ 1.903, 1.948.

³ 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 Vincent Foody, President and Chief Executive Officer, Mobile Communications America, Inc., 135 North Church Street, Suite 310, Spartanburg, SC 29306, and to Elizabeth Sachs, Esq., Lukas, LaFuria, Lantor & Sachs, LLP, 8350 Broad St., Suite 1450, Tysons, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of

Mobile Communications America, Inc.

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File No.: EB-IHD-23-00035733

CD Acct. No.: 202432080010

FRN: 0026218487

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) and Mobile Communications America, Inc. (MCA or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation, as defined below, into whether MCA violated sections 301 and 310(d) of the Communications Act of 1934, as amended (Act), and sections 1.903 and 1.948 of the Commission's rules (Rules) governing the requirements regarding the need for Commission authorization to operate a radio license and approval prior to transferring control of FCC licenses. Specifically, the Bureau investigated whether MCA operated an expired radio license without authorization and failed to seek Commission approval prior to transferring control of a number of radio licenses. To resolve this matter, MCA agrees to implement a compliance plan and pay a \$100,000 civil penalty.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.¹
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "CD Acct. No." means account number 202432080010, associated with payment obligations described in paragraph 20 of this Consent Decree.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which MCA is subject by virtue of its business activities, including but not limited to the Unauthorized Operation and Transfer Rules.
 - (g) "Compliance Officer" means the individual identified at paragraph 15 of this Consent Decree as the person responsible for administration of the Compliance Plan.
 - (h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16. The Compliance Plan provides for obligations to continue for four years from the Effective Date.

¹ 47 U.S.C. § 151 *et seq.*

- (i) “Covered Employees” means all employees and agents of MCA who perform, supervise, oversee, or manage the performance of, duties that relate to MCA’s responsibilities under the Communications Laws, including the Unauthorized Operation and Transfer Rules.
- (j) “Effective Date” means the date by which both the Bureau and MCA have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-IHD-23-00035733 regarding whether MCA violated the Unauthorized Operation and Transfer Rules.
- (l) “LOI” means the Letter of Inquiry issued by the Bureau to MCA on October 24, 2023, in EB-IHD-21-00035733 in connection with the Company’s compliance with the Act and the Commission’s Rules.
- (m) “MCA” or “Company” means Mobile Communications America, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (n) “Operating Procedures” means the internal operating procedures and compliance policies established by MCA to implement the Compliance Plan.
- (o) “Parties” means MCA and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Unauthorized Operation and Transfer Rules” means sections 301 and 310(d) of the Act² and sections 1.903 and 1.948 of the Rules,³ pertaining to unauthorized operation and unauthorized transfers of control and assignments of radio licenses.

II. BACKGROUND

3. *Legal Framework.* Section 301 of the Act provides that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.”⁴ Section 310(d) of the Act provides that no radio licenses “shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding [the] license,” unless the license holder applies for Commission authority to transfer the license, and the Commission finds that the transfer is in the “public interest, convenience, and necessity.”⁵ The Commission has adopted rules governing the procedures and establishing the conditions for obtaining authorization and approval from the Commission for the operation of radio licenses and transactions involving the transfer of control or assignment of same.

4. Consistent with the Act, section 1.903 of the Rules provides that stations in the wireless radio services “must be used and operated only . . . with a valid authorization granted by the Commission.”⁶ Section 1.948 provides that transfers of control or assignments of authorizations in the wireless radio services may only be done “upon application to and approval by the Commission.”⁷ “In the case of an assignment of authorization or transfer of control, the assignor must file an application for

² *Id.* §§ 301, 310(d).

³ 47 CFR §§ 1.903, 1.948.

⁴ 47 U.S.C. § 301.

⁵ *Id.* § 310(d).

⁶ 47 CFR § 1.903(a).

⁷ *Id.* § 1.948(a).

approval of the assignment on FCC Form 603.”⁸ Prior approval is not required for non-substantial, or *pro forma*, assignments involving a telecommunications carrier, but the assignee must provide notice of the transaction by filing Form 603 within 30 days of its completion.⁹

5. *Factual Background.* MCA is a privately held corporation incorporated on August 1, 2013, in the state of Delaware.¹⁰ On February 28, 2021, one of MCA’s subsidiaries, Mobile Communications of Hall, LLC (MCH), was dissolved, resulting in the *pro forma* assignment of two business radio licenses from MCH to MCA.¹¹ On November 18, 2022, MCA consummated the acquisition of two entities—Communications Electronics, Inc. and Communications Electronics of Virginia, LLC—that resulted in the transfer of six total business radio licenses.¹²

6. MCA failed to notify the Commission of the 2021 *pro forma* assignment within 30 days of its completion, and failed to obtain prior authorization for the 2022 transfer of control of six business radio licenses. Instead, on September 21, 2023, MCA filed several applications through the Universal Licensing System (ULS) seeking waiver of section 1.948 of the Commission’s rules and *nunc pro tunc* consent to the transactions.¹³

7. Additionally, on January 3, 2023, a private business radio license owned by MCA expired.¹⁴ Nevertheless, MCA continued its operations under the expired license. MCA filed an application for special temporary authority (STA) on September 20, 2023.¹⁵ The STA was granted on September 25, 2023, under Call Sign WRYV884.¹⁶ That license was canceled on October 16, 2023, after MCA’s application for a permanent replacement license was granted.¹⁷

8. Immediately prior to filing the above applications, MCA notified the Bureau of the above facts. On October 24, 2023, the Bureau sent a Letter of Inquiry (LOI) to MCA.¹⁸ On November 24, 2023, MCA responded to the LOI.¹⁹ In its response, MCA acknowledged the foregoing conduct and

⁸ *Id.* § 1.948(c).

⁹ *Id.*

¹⁰ Letter from Kari Dixon, Chief Financial Officer, Mobile Communications America, Inc., to Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at Response to Inquiry 1 (Nov. 21, 2023) (on file in EB-IHD-23-00035733) (LOI Response).

¹¹ *Id.* at Response to Inquiry 16. The two licenses at issue were Call Signs WNJI950 and WPAE321.

¹² *Id.* at Response to Inquiry 14, Exhibit J. The six licenses at issue were Call Signs WPKX255, WPMR955, WPMS671, WQPX215, WQUU387, and WRVB783.

¹³ See *FCC Application for Assignments of Authorization or Transfers of Control*, ULS File Nos. 0010702489, 0010703272, 0010704404 (filed Sept. 21, 2023).

¹⁴ LOI Response at Response to Inquiry 15.

¹⁵ See *FCC Application for Radio Service Authorization*, ULS File No. 0010703543 (filed Sept. 21, 2023) (*Sept. 21, 2023 Radio Application*).

¹⁶ See *id.*

¹⁷ See *FCC Application for Radio Service Authorization*, ULS File No. 0010711288 (filed Sept. 27, 2023) (*Sept. 27, 2023 Radio Application*); see also LOI Response at Response to Inquiry 15. The new license is Call Sign WRZA825.

¹⁸ See Letter from Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Elizabeth Sachs, Counsel for Mobile Communications America, Inc., Lukas, LaFuria, Lantor & Sachs (Oct. 24, 2023) (on file in EB-IHD-23-00035733).

¹⁹ See LOI Response, *supra* note 10.

conceded that it had not provided appropriate notice to or received authorization from the Commission in connection with the above transactions.²⁰

9. The Bureau's Investigation revealed that MCA operated a radio license without Commission authorization, transferred control of several radio licenses without prior Commission approval, and completed a *pro forma* assignment of two radio licenses without providing notice of the transaction.²¹ 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

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

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

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

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, MCA 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, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against MCA concerning the matters that were the subject of the Investigation, or to set for hearing the question of MCA's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.²²

14. **Admission of Liability.** MCA admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that its action described above in paragraphs 5 through 8 of this Consent Decree violated the Unauthorized Operation and Transfer Rules.

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, MCA 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 MCA 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 Unauthorized Operation and Transfer Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, MCA agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Commission's Unauthorized Operation and Transfer Rules and with the terms and conditions of this Consent Decree. MCA will implement, at a minimum, the following procedures:

²⁰ See *id.* at Responses to Inquiries 14–16, Exhibits I & J.

²¹ See generally *Sept. 21, 2023 Radio Application*, *supra* note 15, *Sept. 27, 2023 Radio Application*, *supra* note 17; LOI Response, *supra* note 10, at Response to Inquiry 14.

²² See 47 CFR § 1.93(b).

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, MCA shall establish Operating Procedures that all Covered Employees must follow to help ensure MCA's compliance with the Unauthorized Operation and Transfer Rules. MCA's Operating Procedures shall include internal procedures and policies specifically designed to ensure that MCA complies with the Unauthorized Operation and Transfer Rules. MCA shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Unauthorized Operation and Transfer Rules. With regard to the sale or disposition of any FCC authorizations or licenses, MCA will include in its standard due diligence checklist a review for filing of necessary FCC applications and consultation with outside counsel at least thirty (30) days prior to closing any such transaction, and confirmation that it has received FCC consent to transfer or assign FCC authorizations or licenses prior to closing the transaction.
- (b) **Additional Procedures.** MCA reports²³ that it has taken the following independent steps to prevent further violations of the type addressed herein:
- i. MCA will hold quarterly calls led by regulatory counsel intended to educate attendees on FCC requirements, which will be attended by all new hires in that quarter, as well as by regional vice presidents and divisional presidents of MCA's wireless communications divisions, MCA's entire compliance department, and representatives of MCA's state and federal tax department. The PowerPoint presentation used at these calls will be updated as necessary, and the calls will be recorded. Certain corporate officers²⁴ will attend the call on an annual basis.
 - ii. MCA will implement additional cross-checks for all acquisitions involving spectrum, including verification of all FRNs registered for the EINs of the seller and ensuring that all systems/equipment being acquired are associated with an FCC authorization or do not require an FCC authorization.
 - iii. MCA will conduct an annual review of its organization chart to identify potential dissolution of inactive subsidiaries, but will not dissolve any entity before that action has been approved by the following offices as applicable for the entity: Division President, Division Controller, MCA Contract Lead, MCA Compliance Lead, FCC regulatory counsel, and at least one corporate officer.
 - iv. MCA will continue to maintain an email address for all FCC correspondence that is monitored by multiple persons within the Company. Both the Enterprise Wireless Alliance (EWA) and Lukas, Lafuria, Lantor & Sachs, LLP (LLLS) will monitor MCA-related FRNs for filing deadlines. Internal MCA staff will handle largely administrative matters, such as filing construction notifications and renewals. All MCA applications requiring frequency coordination will be filed through EWA. LLLS will review and file all complex legal matters, including assignment and transfer of control applications and related consummation notifications. MCA staff responsible for FCC licensing will remain in regular communications with LLLS.

²³ See LOI Response, *supra* note 10, at Response to Inquiry 17.

²⁴ The corporate officers are identified in Exhibit D to the LOI Response.

MCA agrees to incorporate the foregoing procedures into this Consent Decree and maintain these or equivalent procedures through the Termination Date established in paragraph 19.

- (c) **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 Unauthorized Operation and Transfer Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure MCA's compliance with the Unauthorized Operation and Transfer Rules. MCA shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. MCA shall distribute any final revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** MCA shall establish and implement a Compliance Training Program on compliance with the Commission's Unauthorized Operation and Transfer Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of MCA's obligation to report any noncompliance with the Unauthorized Operation and Transfer Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. MCA shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

17. **Reporting Noncompliance.** MCA shall report any noncompliance with the Unauthorized Operation and Transfer Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that MCA 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 MCA has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Ryan Mitchell at Ryan.Mitchell@fcc.gov, and William Knowles-Kellett at William.Knowles-Kellett@fcc.gov, with a copy submitted electronically to EnforcementBureauIHD@fcc.gov.

18. **Compliance Reports.** MCA 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, thirty-six (36) months after the Effective Date, and forty-eight (48) months after the Effective Date.

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

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of MCA, 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 MCA 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 MCA has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted electronically to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Ryan Mitchell at Ryan.Mitchell@fcc.gov, and William Knowles-Kellett at William.Knowles-Kellett@fcc.gov, with a copy submitted electronically to EnforcementBureauIHD@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire forty-eight (48) months after the Effective Date. All obligations thereunder are waived for any period during which MCA does not hold FCC authorizations.

20. **Civil Penalty.** MCA will pay a civil penalty to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within thirty (30) calendar days of the Effective Date. MCA 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).²⁶ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. MCA shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Ryan Mitchell at Ryan.Mitchell@fcc.gov, William Knowles-Kellett at William.Knowles-Kellett@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/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:²⁷

- 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 159²⁸ or printed CORES form²⁹ 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

²⁵ 47 CFR § 1.16.

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

²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

²⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁹ 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>.

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).³⁰ 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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/core/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by MCA.

23. **Waivers.** As of the Effective Date, MCA waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. MCA 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 MCA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and MCA shall waive any statutory right to a trial *de novo*. MCA hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³¹ relating to the matters addressed in this Consent Decree.

³⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³¹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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

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

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

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

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

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

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

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

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

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Vincent G. Foody
President and Chief Executive Officer
Mobile Communications America, Inc.

Date

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

In re Application of	)	NAL/Account No. MB-202441410009
Pacifica Foundation, Inc.	)	Application File No. 0000180618
	)	FRN: 0001546415
for Renewal of License	)	Facility ID No. 51249

ORDER

Adopted: April 23, 2024**Released: April 23, 2024**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Pacifica Foundation, Inc. (Licensee), licensee of noncommercial educational (NCE) station WBAI-FM, New York, New York (Station). The Consent Decree resolves issues regarding the Station's compliance with sections 317 and 399B of the Communications Act of 1934, as amended (Act), and sections 73.503(d) and 73.1212 of the Commission's rules (Rules).¹ Also before us are the above-captioned application for renewal of license (Application) filed by Licensee on January 21, 2022;² a Petition to Deny (Petition) filed against the Application by Pacifica Safety Net (Petitioner), several Informal Objections (collectively, Objections) filed against the Application,³ and related responsive pleadings.⁴

2. Among the allegations raised in the Petition and Objections are specific claims concerning several programs (e.g., the "Gary Null Show," the "Christine Blomdale Special," and "Off the Hook") purportedly aired over the Station that contain comparative and qualitative descriptions, price information, calls to action, and inducements to buy products or services provided by program guests.⁵ The products and services were created by either the respective Station program host or their guests on the shows, and purportedly related to the topics of their respective program's discussions and interview topics. The Petitioner and Objectors allege that Station program hosts promoted these products and services without proper sponsorship identification. The Petitioner has provided the Commission with full written transcripts of the broadcast programs in question.⁶ The Petitioner and Objectors do not advocate

¹ 47 U.S.C. §§ 317, 399B; 47 CFR §§ 73.503(d) (Underwriting Laws), 73.1212 (Sponsorship ID Rules).

² See Application File No. 0000180618 (filed Jan. 21, 2022); *Broadcast Applications*, Public Notice, Report No. PN-1-220125-01, at 9 (MB Jan. 25, 2022).

³ See Petition to Deny of Pacifica Safety Net, Pleading File No. 0000189933 (filed May 2, 2022); Informal Objection of Carol Wolfley, Pleading File No. 0000195283 (filed July 19, 2022); Informal Objection of Harry Weiner, Pleading File No. 0000197825 (filed Aug. 17, 2022); Informal Objection of Douglass Ross Marshall, Pleading File No. 0000197824 (filed Aug. 17, 2022); Informal Objection of Nancy Schimmel, Pleading File No. 0000197827 (filed Aug. 17, 2022); Informal Objection of David Hart, Pleading File No. 0000197881 (filed Aug. 18, 2022); Informal Objection of Henry Ira Bernstein, Pleading File No. 0000197910 (filed Aug. 19, 2022); and Informal Objection of Stephen Sacks, Pleading File No. 0000198051 (filed Aug. 22, 2022).

⁴ See Opposition of Pacifica Foundation, Inc., Pleading File No. 0000192805 (filed June 1, 2022); Reply of Pacifica Safety Net, Pleading File No. 0000193548 (filed June 20, 2022).

⁵ See Petition; Objections.

⁶ See Petition, Exhibits for Petition to Deny.

that the Station's Application be denied but rather recommend some or all of the following sanctions, including a monetary forfeiture, a short-term license renewal, and/or a consent decree with assurances that the misconduct will not be repeated in the future and that a compliance plan will be implemented and administered by an independent compliance officer.⁷

3. We have negotiated the Consent Decree adopted herein, in which the Licensee acknowledges that it has violated the Underwriting Laws and Sponsorship ID Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive plan to ensure its future compliance with its underwriting and sponsorship identification obligations, submit annual compliance reports to the Bureau for the duration of the license term of the Station as set forth herein, and pay a Civil Penalty to the United States Treasury in the total amount of twenty-five thousand dollars (\$25,000.00). Additionally, after reviewing the record before us, we believe that the grant of a short-term license renewal is appropriate in order to ensure the Licensee's ongoing compliance with the Act and the Rules.⁸ Accordingly, upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in Paragraph 19 of the attached Consent Decree, we will grant the Application for a short-term renewal of two years (24 months).

4. Finally, we have reviewed the Application in accordance with section 309(k) of the Act⁹ and find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing in the record creates a substantial or material question of fact calling for further inquiry regarding the Application. After reviewing the record and the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree, terminating the Bureau's investigation of the issues raised in the Petition and Objections, and granting the Application for a short renewal term of two years.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4(j) and 309(k) of the Communications Act of 1934, as amended,¹⁰ and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,¹¹ the Consent Decree attached hereto **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the Petition to Deny (Pleading File No. 0000189933) filed by Pacifica Safety Net on May 2, 2022, the Informal Objection (Pleading File No. 0000195283) filed by Carol Wolfley on July 19, 2022, the Informal Objections (Pleading File Nos. 0000197825, 0000197824, and 0000197827) filed by Harry Weiner, Douglass Marshall, and Nancy Schimmel on August 17, 2022, the Informal Objection (Pleading File No. 0000197881) filed by David Hart on August 18, 2022, the Informal Objection (Pleading File No. 0000197910) filed by Henry Bernstein on August 19, 2022, and the Informal Objection (Pleading File No. 0000198051) filed by Stephen Sacks on August 22, 2022, **ARE GRANTED TO THE EXTENT INDICATED HEREIN.**

7. **IT IS FURTHER ORDERED** that the application of Pacifica Foundation, Inc., for renewal of license for noncommercial educational station WBAI-FM, New York, New York, Facility ID No. 51249 (Application File No. 0000180618) **IS GRANTED**, as conditioned herein.

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

⁷ See Petition; Objections.

⁸ 47 U.S.C. §§ 317, 399B; 47 CFR §§ 73.503(d), 73.1212.

⁹ 47 U.S.C. § 309(k)(1).

¹⁰ 47 U.S.C. §§ 154(i), 154(j), and 309(k).

¹¹ 47 CFR §§ 0.61, 0.283.

above **IS TERMINATED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent via e-mail to Brad Deutsch, Esq., Counsel to Pacifica Foundation, Inc., 3000 K Street, NW, Suite 420, Washington, DC 20007; Sherry Gendelman, info@pacificasafetynet.org, Carol Wolfley, cgwolfley@comcast.net, Harry Weiner, harry@b-town.org, Douglas Ross Marshall, tercio8@earthlink.net, Nancy Schimmel, nancyschimmel@mac.com, David Hart, davehar77@yahoo.com, Henry Ira Bornstein, hbornstein@sbcglobal.net, and Stephen Sacks, johnsonsacks@comcast.net.

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

Holly Saurer
Chief, Media Bureau

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

In re Application of	)	NAL/Account No. MB-202441410009
	)	
Pacifica Foundation, Inc.	)	FRN: 0001546415
	)	
for Renewal of License	)	Facility ID No. 51249
	)	Application File No. 0000180618

CONSENT DECREE

I. INTRODUCTION

1. The Media Bureau of the Federal Communications Commission and Pacifica Foundation, Inc. (hereafter “Licensee,” as defined below), licensee of noncommercial educational (NCE) station WBAI-FM, New York, New York (hereinafter “Station,” as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation concerning Licensee’s compliance with sections 317 of the Communications Act of 1934, as amended, and 73.1212(a) of the Commission’s rules, relating to on-air sponsorship identification announcements; and sections 399B of the Act and 73.503(d) of the Commission’s rules, relating to underwriting requirements.¹ Pursuant to the Consent Decree, Licensee agrees, among other things, to a short-term, two-year license renewal for the Station,² to implement a comprehensive plan to ensure its future compliance with its underwriting and sponsorship identification obligations, and to pay a Civil Penalty to the United States Treasury in the total amount of twenty-five thousand dollars (\$25,000.00).

II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification;
 - (c) “Application” means the pending application for renewal of license for station WBAI-FM, New York, New York, Facility ID No. 51249 (Application File No. 0000180618).
 - (d) “Bureau” means the Media Bureau of the Federal Communications Commission;
 - (e) “Civil Penalty” means the payment Pacifica has agreed to pay to the United States Treasury;
 - (f) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices;

¹ See 47 U.S.C. §§ 317, 399B; 47 CFR §§ 73.503(d) (Underwriting Laws), 73.1212(a) (Sponsorship ID Rules).

² Licensee filed an application for renewal of license on January 21, 2022. See Application File No. 0000180618 (filed Jan. 21, 2022) (Application); *Broadcast Applications*, Public Notice, Report No. PN-1-220125-01, at 9 (MB Jan. 25, 2022).

- (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Licensee is subject by virtue of being a Commission licensee, including, but not limited to, sections 73.503(d) and 73.1212(a) of the Rules, 47 CFR §§ 73.503(d), 73.1212(a);
- (h) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with sections 317 and 399B of the Act, 47 U.S.C. §§ 317, 399B, and sections 73.503(d) and 73.1212(a) of the Rules, 47 CFR §§ 73.503(d), 73.1212(a);
- (i) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to Licensee’s responsibilities under the Act and the Rules, including the Underwriting Laws and Sponsorship ID Rules.
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (k) “Investigation” means the Bureau’s investigation of information contained in the Application and related pleadings, as detailed herein;
- (l) “License” refers to the license authorization for noncommercial educational station WBAI-FM, New York, New York (Facility ID No. 51249);
- (m) “Licensee” means Pacifica Foundation, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
- (n) “Pacifica” means Pacifica Foundation, Inc.;
- (o) “Parties” means the Licensee and the Bureau;
- (p) “Rules” means the FCC’s rules, found in Title 47 of the Code of Federal Regulations;
- (q) “Sponsorship ID Rules” means the on-air sponsorship identification requirements set forth in section 317 of the Act, 47 U.S.C. § 317, and section 73.1212 of the Rules, 47 CFR § 73.1212;
- (r) “Station” means noncommercial educational station WBAI-FM, New York, New York (Facility ID No. 51249);
- (s) “Underwriting Laws” means section 399B of the Act, 47 U.S.C. § 399B, section 73.503(d) of the Rules, 47 CFR § 503(d), and the decisions and orders of the Commission interpreting these provisions; and
- (t) “Violations” means the violations of sections 317 and 399B of the Communications Act, as amended, 47 U.S.C. §§ 317, 399B, and sections 73.503(d) and 73.1212(a) of the Commission’s rules, 47 CFR §§ 73.503(d), 73.1212(a).

III. BACKGROUND

A. Legal Background

3. *Sponsorship Identification Rules.* Beginning with the Radio Act of 1927, broadcast stations have been required to identify on-air the sponsor of any paid program material that they broadcast.³ When Congress adopted the Communications Act of 1934, and created the Federal

³ Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162, 1170 § 19 (repealed 1934).

Communications Commission, it incorporated into section 317 almost verbatim the same requirement that stations provide on-air sponsorship identification announcements.⁴ Since that time, the Commission has continued to underscore the need for transparency and disclosure to the public about the true identity of a program's sponsor. The Commission has explained that its sponsorship identification requirements are "grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them."⁵ When broadcasters air paid-for programming without disclosing the program's sponsor, they can mislead the public.⁶

4. The Commission sponsorship identification requirements are set forth in sections 317 of the Act and 73.1212 of the Commission's rules. Specifically, section 317(a)(1) of the Act provides in part:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person ⁷

Section 73.1212(a) of the Commission's rules, which implements section 317(a)(1), further provides in part:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied ⁸

5. *Underwriting Laws.* NCE broadcasters are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and NCE broadcasters cannot air commercial advertising.⁹ The Underwriting Laws help "protect the public's use and enjoyment of commercial-free broadcasts" and "provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising."¹⁰ NCE broadcasters are licensed to provide noncommercial, locally-oriented programming for their communities, and the Commission acts when necessary to enforce the laws prohibiting NCE-FM stations from airing announcements that promote for-profit advertisers.

6. The Underwriting Laws define an advertisement as, among other things, programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.¹¹ Section 399B(b)(2) of the Act specifically provides that noncommercial

⁴ See 47 U.S.C. § 317.

⁵ See, e.g., *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593-94 (2005).

⁶ *Cumulus Radio LLC, et. al*, Forfeiture Order, 36 FCC Rcd 738 (2021).

⁷ 47 U.S.C. § 317(a).

⁸ 47 CFR § 73.1212(a).

⁹ 47 U.S.C. § 399B(b)(2).

¹⁰ *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

¹¹ 47 U.S.C. § 399B(a).

educational stations may not broadcast advertisements.¹² Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors' products, services, or businesses.¹³ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.¹⁴

B. Factual Background

7. The Commission received a Petition to Deny and several Informal Objections filed against the above-captioned Application alleging that Licensee violated the Underwriting Laws and Sponsorship ID Rules by airing programs on the Station from June 2014 to April 2022, which impermissibly promoted their for-profit underwriters' products or services and contained comparative and qualitative descriptions, pricing information, calls to action, and inducements to buy products or services created by either the Station program host or their guests on the shows.¹⁵ The Petitioner and Objectors also allege that Station program hosts promoted these products and services without proper sponsorship identification. In support of these allegations, the Petitioner provided the Commission with full written transcripts of the broadcast programs in question.¹⁶

8. Based on the foregoing, the Bureau's Audio Division issued a letter of inquiry to gather additional information concerning the allegations and suspended processing of the Application.¹⁷ 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,

¹² 47 U.S.C. § 399B(b)(2).

¹³ *Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines*, Public Notice, 51 Fed. Reg. 21800 (June 16, 1986), republished, Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Public Notice, 7 FCC Rcd 827 (1992).

¹⁴ *Id.*

¹⁵ See Petition to Deny of Pacifica Safety Net, Pleading File No. 0000189933 (filed May 2, 2022); Informal Objection of Carol Wolfley, Pleading File No. 0000195283 (filed July 19, 2022); Informal Objection of Harry Weiner, Pleading File No. 0000197825 (filed Aug. 17, 2022); Informal Objection of Douglass Ross Marshall, Pleading File No. 0000197824 (filed Aug. 17, 2022); Informal Objection of Nancy Schimmel, Pleading File No. 0000197827 (filed Aug. 17, 2022); Informal Objection of David Hart, Pleading File No. 0000197881 (filed Aug. 18, 2022); Informal Objection of Henry Ira Bernstein, Pleading File No. 0000197910 (filed Aug. 19, 2022); and Informal Objection of Stephen Sacks, Pleading File No. 0000198051 (filed Aug. 22, 2022).

¹⁶ See Petition, Exhibits for Petition to Deny.

¹⁷ See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Pacifica Foundation, Inc. (Feb. 12, 2024); Application.

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. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Licensee concerning the matters that were the subject of the Investigation, or to set for hearing the question of Licensee's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹⁸ Licensee acknowledges and agrees that nothing herein prevents the Bureau or Commission from instituting any new proceedings against Licensee during the term of this Consent Decree concerning any matters that were not the subject of the Investigation.¹⁹

13. **Admission of Liability.** Licensee stipulates that the actions described in Paragraph 7 violated sections 317 and 399B of the Act and sections 73.503(d) and 73.1212(a) of the Rules.

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Licensee shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Underwriting Laws and Sponsorship ID Rules prior to assuming such duties.

15. **Compliance Plan.** Licensee agrees that, within 60 calendar days after the Effective Date, the Compliance Officer shall, on behalf of Licensee, develop, implement, and administer a Compliance Plan designed to ensure Licensee's future compliance with the Communications Laws, the Underwriting Laws and Sponsorship ID Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall be applicable to all broadcast stations of which Licensee is and becomes the licensee during the term of this Consent Decree. The Compliance Plan shall contain, at a minimum, the following components:

- (a) **Consultation with Counsel.** If the Compliance Officer is not an FCC regulatory counsel or in-house counsel, Licensee shall consult with outside FCC regulatory counsel regarding Licensee's overall compliance with the Underwriting Laws and Sponsorship ID Rules. Such consultations shall occur on an annual basis, if not more frequently.
- (b) **Operating Procedures.** The Compliance Plan shall contain Operating Procedures that all Covered Employees must follow to ensure Licensee's compliance with the Underwriting Laws and Sponsorship ID Rules. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee complies with the Underwriting Laws and Sponsorship ID Rules.
- (c) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that the Compliance Officer has distributed to all Covered Employees within 60 calendar days after the Effective Date. The Compliance Manual shall explain fully and completely the Underwriting Laws and Sponsorship ID Rules and include the Operating Procedures that

¹⁸ See 47 CFR § 1.93(b).

¹⁹ We caution Licensee that it may jeopardize its license if ongoing violations of the Underwriting Laws and Sponsorship ID Rules persist.

Covered Employees shall follow. The Compliance Officer shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Compliance Officer shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (d) **Compliance Training Program.** The Compliance Plan shall contain a comprehensive Compliance Training Program for all Covered Employees regarding compliance with the Underwriting Laws and Sponsorship ID Rules. As part of the Compliance Training Program, the Compliance Officer shall advise all Covered Employees of Licensee's obligation to report any noncompliance with the Underwriting Laws and Sponsorship ID Rules under Paragraph 16 of this Consent Decree and shall instruct Covered Employees on how to disclose noncompliance to the Compliance Officer and Licensee. The Compliance Officer shall train all Covered Employees pursuant to the Compliance Training Program within 75 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within 30 calendar days after the date such person becomes a Covered Employee. The Compliance Officer shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

16. **Reporting Noncompliance.** Licensee agrees that it shall report any noncompliance with the Underwriting Laws and Sponsorship ID Rules and with the terms and conditions of this Consent Decree within 15 calendar days after discovery of such noncompliance at any station of which Licensee is or becomes the licensee. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; Christopher Clark, Audio Division, Media Bureau, Federal Communications Commission, at Christopher.Clark@fcc.gov; and Dana Bradford, Audio Division, Media Bureau, Federal Communications Commission, at Dana.Bradford@fcc.gov.

17. **Compliance Reports.** Licensee agrees that it shall submit Compliance Reports to the Commission 90 calendar days after the Effective Date and thereafter annually on the anniversary of the Effective Date up to and including the Termination Date, as that term is defined below.²⁰

- (a) Each Compliance Report shall include a detailed description of Licensee's efforts during the preceding period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws and Sponsorship ID Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, stating that the Compliance Officer has personal knowledge that Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 16 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.²¹

²⁰ A Compliance Report must be filed on the Termination Date in the event that the Termination Date does not fall on the anniversary of the Effective Date.

²¹ 47 CFR § 1.16.

- (c) If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted via email to: Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; Christopher Clark, Audio Division, Media Bureau, Federal Communications Commission, at Christopher.Clark@fcc.gov; and Dana Bradford, Audio Division, Media Bureau, Federal Communications Commission, at Dana.Bradford@fcc.gov.

18. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate twenty-four (24) months after grant of the Application, *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations under the terms of the Consent Decree. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with the terms of the Consent Decree, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for an additional period of time as the Bureau deems appropriate.

19. **Civil Penalty.** Licensee agrees that it shall pay a Civil Penalty to the United States Treasury in the total amount of twenty-five thousand dollars (\$25,000.00). Licensee agrees to pay the Civil Penalty in five consecutive monthly installments (each an Installment Payment) of \$5,000.00 each, until the Civil Penalty is paid in full. Licensee agrees that each Installment Payment shall be due and received by the United States Treasury on or before the first day of each calendar month (Due Date), with the first such Installment Payment due and received by the United States Treasury on or before the first day of the first full month after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²² Upon an Event of Default, as defined below, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. On the date each Installment Payment is made, Licensee shall send notification of the payment via email to: Albert.Shuldiner@fcc.gov; Christopher Clark, Audio Division, Media Bureau, Federal Communications Commission, at Christopher.Clark@fcc.gov; and Dana Bradford, Audio Division, Media Bureau, Federal Communications Commission, at Dana.Bradford@fcc.gov.

20. Below are payment instructions that Licensee shall follow based on the form of payment it has selected:²³

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159²⁴ or printed Commission Registration System (CORES) form²⁵ 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

²² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

²⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁵ 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>.

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).²⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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

21. **Event of Default.** Licensee agrees that an Event of Default shall occur upon the failure by Licensee to pay the full amount of any Installment Payment by the Due Date specified in this Consent Decree.

22. **Interest Charges for Collection, and Acceleration of Maturity Date.** Licensee agrees that after an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee.

23. **Waivers.** Licensee agrees that, as of the Effective Date, it waives any and all rights it may otherwise have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Parties agree that Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. The Parties further agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁷ relating to the matters addressed

²⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁷ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

in this Consent Decree.

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

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

26. **Subsequent Rule or Order**. The Parties agree that if any provision of 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.

27. **Successors and Assigns**. Licensee acknowledges and agrees that this Consent Decree and all of the obligations, terms and conditions herein shall be binding on its successors, assigns, and transferees, and on the successors, assigns, and transferees of all broadcast stations of which it is and becomes the licensee.

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

29. **Modifications**. The Parties agree that this Consent Decree may not be modified without the advance written consent of both Parties.

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

31. **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.

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

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Holly Saurer
Chief, Media Bureau

Date: _____

PACIFICA FOUNDATION, INC.

By: _____
Susan Young, Chair
Pacifica Foundation, Inc.

Date: _____



PUBLIC NOTICE

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

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

DA 24-356

Released: April 16, 2024

COMMENT AND REPLY COMMENT DATES SET FOR FM BROADCAST BOOSTER FNPRM

MB Docket Nos. 20-401, 17-105

Comment Date: May 16, 2024

Reply Comment Date: June 17, 2024

On April 2, 2024, the Commission released a Further Notice of Proposed Rulemaking in its proceeding to modernize and revise its rules by permitting limited, voluntary program origination on FM booster stations.¹ The *FNPRM* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of the *FNPRM* in the Federal Register.²

By this *Public Notice*, the Media Bureau announces that the *FNPRM* was published in the Federal Register on April 16, 2024.³ Comments must be submitted no later than May 16, 2024. Reply Comments must be submitted no later than June 17, 2024. Commenters should follow the filing instructions provided in paragraph 97 of the *FNPRM*.⁴ The *FNPRM* is also available on the Commission's website.⁵

For additional information on this proceeding, contact Irene Bleiweiss, Irene.Bleiweiss@fcc.gov, or Albert Shuldiner, Albert.Shuldiner@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2700. Press inquiries should be directed to Nancy Murphy (202) 418-1043, Nancy.Murphy@fcc.gov.

By the Chief, Media Bureau

--FCC--

¹ *Amendment of Section 74.1231(i) of the Commission's Rules on FM Broadcast Booster Stations*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket Nos. 21-401, 17-105, FCC 24-35 (rel. Apr. 2, 2024) (*FNPRM*).

² *See id.* at 1.

³ 89 Fed. Reg. 26847 (Apr. 16, 2024).

⁴ *FNPRM* at 39, para. 97.

⁵ <https://docs.fcc.gov/public/attachments/FCC-24-35A1.pdf>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-357

Released: April 15, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES CERTAIN RDOF AND CAF PHASE II AUCTION CENSUS BLOCK GROUPS ARE ELIGIBLE FOR OTHER FUNDING PROGRAMS

AU Docket No. 20-34
WC Docket No. 19-126
AU Docket No. 17-182
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB) announces that certain Rural Digital Opportunity Fund (RDOF) and Connect America Fund (CAF) Phase II auction census block groups (CBG) are now eligible for other funding programs. Specifically, RiverStreet Communications of North Carolina, Inc. (RiverStreet) (Study Area Code (SAC) 239033) has notified the Commission that it will not fulfill its commitment to offer voice and broadband service to certain CBGs within its CAF Phase II auction supported service area in North Carolina.¹ In addition, Cebridge Telecom LA, LLC (Cebridge Telecom LA) (SAC 279064) and Cable One VoIP LLC d/b/a Sparklight (Cable One VoIP) (SAC 279065) have notified the Commission of their decisions to withdraw from the RDOF support program in all the CBGs covered by their authorized winning bids in Louisiana.² The carriers will be subject to penalties, as described below, for their defaults.

¹ Letter from Carri Bennet, Counsel to RiverStreet Communications of North Carolina, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al. (filed Mar. 13, 2024). RiverStreet was authorized to receive \$679,130.10 in CAF Phase II auction support over 10 years to serve 368 locations in North Carolina. *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 5966 (WCB/OEA 2019). RiverStreet is defaulting on 234 locations. RiverStreet remains committed to deploying service to the remaining CBGs in its CAF Phase II auction supported areas.

² Letter from Cristina Chou, Vice President, Federal Affairs, Altice USAC, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Mar. 15, 2024) (Cebridge Telecom LA Withdrawal Letter); Letter from Chérie R. Kiser and Angela F. Collins, Counsel to Cable One VoIP LLC d/b/a Sparklight, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Mar. 12, 2024) (Cable One VoIP Withdrawal Letter). Cebridge Telecom LA, which was assigned winning bids by its parent company Altice USA, Inc., was authorized in August 2022 to receive a total of \$303,894.20 in support over a 10-year term to offer voice and broadband service to 2,266 locations in Louisiana *Rural Digital Opportunity Fund Support Authorized for 95 Winning Bids*; AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 9317, Attach. A (WCB/OEA 2022) (*Cebridge Telecom LA Authorization Public Notice*); *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 4140 (WCB/OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*). Cable One VoIP was assigned winning bids by the Wisper-CABO 904 Consortium which included Cable One VoIP's parent company, Cable One, Inc., as a member. *Auction 904 Long-Form Applicants Public Notice*. Cable One VoIP was authorized in June 2022 to receive a total of \$3,615 in support over a 10-year term to offer voice and broadband service to 22 locations in Louisiana. *Rural Digital Opportunity Fund Support Authorized for 513 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 7271, Attach. A (WCB/OEA 2022) (*Cable One VoIP Authorization Public Notice*).

(continued....)

By announcing that 1) RiverStreet will not serve the identified eligible census blocks within the defaulted CBGs in North Carolina, and 2) Cebridge Telecom LA and Cable One VoIP are defaulting on the eligible census blocks within the CBGs covered by all their authorized winning bids in Louisiana,³ we notify stakeholders 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.⁴ 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.⁵ Our announcement avoids leaving these areas unserved for the duration of the

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This public notice addresses only these carriers' authorized winning bids in Louisiana. Altice USA, Inc. and Cable One VoIP remain committed to meeting their RDOF obligations in the other states where they were authorized to receive support.

³ The minimum geographic unit for bidding for the CAF Phase II auction and RDOF was a CBG containing one more eligible census blocks. While bidders were required to bid at the CBG level, they can only use their support to offer service in the eligible census blocks within those CBGs. *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6146, para. 213 (2020); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182 et al., Public Notice, 33 FCC Rcd 1428, 1493, para. 203 (2018).

⁴ 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>.

⁵ 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

(continued....)

CAF Phase II auction or RDOF deployment terms,⁶ because providers may now have access to alternative funding to serve these areas.

These carriers remain subject to all eligible telecommunications carrier (ETC) obligations unless and until they follow the relevant procedures to relinquish their designations.⁷ Additionally, they cannot discontinue voice service without Commission approval.⁸

RiverStreet. In Appendix A, we provide a list of all the CAF Phase II auction eligible census blocks contained within the CBGs that RiverStreet will not serve. In addition, we will also update the Broadband Funding Map to remove the census blocks from RiverStreet's service area.⁹ 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. RiverStreet otherwise remains subject to CAF Phase II auction 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.¹⁰ We will continue to use the available tools to monitor RiverStreet's compliance with the applicable deployment obligations in its remaining supported service area.¹¹

While RiverStreet notified the Commission that it will not serve the identified census blocks, RiverStreet is not withdrawing from the CAF Phase II auction program. The CAF Phase II auction 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.¹² RiverStreet remains subject to the program rules, including the applicable non-compliance measures,¹³ for the duration of the support term except as

(Continued from previous page)

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.”).

⁶ CAF Phase II auction recipients must offer the required service to 100% of the required number of locations by December 31, 2025. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 5949, 5964, para. 40 (2016) (*CAF Phase II Auction Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 109, 112, para. 9 (2020). RDOF recipients authorized in 2021 and 2022 must offer the required service to 100% of their original location total by December 31, 2027 and December 31, 2028, respectively. *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 709, para. 45 (2020) (*RDOF Order*). If more locations than the original estimated are identified during the support term, recipients will have an additional two years to serve the additional locations subject to limited exceptions. *Id.* at 710, para. 49.

⁷ 47 U.S.C. § 214(e)(4).

⁸ 47 U.S.C. § 214(a); 47 CFR § 63.71.

⁹ Federal Communications Commission, National Broadband Map, <https://broadbandmap.fcc.gov/home> (last visited Apr. 15, 2024).

¹⁰ *See, e.g.*, 47 CFR § 54.320(c), (d).

¹¹ *See, e.g.*, 47 CFR §§ 54.316, 54.320(d)(1).

¹² *See, e.g.*, 47 CFR § 54.320(c), (d); *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); *CAF Phase II Auction Order*, 31 FCC Rcd at 5966, para. 46 (explaining that compliance with CAF Phase II auction deployment obligations would be determined at the state level).

¹³ *See, e.g.*, 47 CFR § 54.320(c), (d).

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 section 54.320(d) of the Commission's rules for the census blocks identified in Appendix A consistent with precedent,¹⁴ and instruct USAC to stop paying support for the identified census blocks pursuant to section 54.320(c) of the Commission's rules.¹⁵ Generally, the Commission's rules may be waived for good cause shown.¹⁶ 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.¹⁷

Despite our limited waiver, which is narrowly limited to stopping payments of future support for the identified census blocks, RiverStreet otherwise remains subject to section 54.320(d) of the Commission's rules.¹⁸ If RiverStreet fails to meet its interim service milestones by not serving the required number of locations based on its original authorized location total, RiverStreet will be placed in the associated non-compliance tier.¹⁹ 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.²⁰ 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 RiverStreet's monthly disbursement, i.e., we will withhold no support other than the support we stopped paying for the

¹⁴ *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, 2014).

¹⁵ 47 CFR § 54.320(c), (d). 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: $((\text{total monthly authorized support} / \text{total authorized locations}) \times (\text{total authorized locations} - \text{defaulted locations}))$. Subject to support withholding pursuant to any applicable non-compliance tiers, RiverStreet's monthly support for the CAF Phase II auction in North Carolina will be approximately \$2,060.

¹⁶ 47 CFR § 1.3.

¹⁷ 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*).

¹⁸ 47 CFR § 54.320(d).

¹⁹ 47 CFR § 54.320(d)(1).

²⁰ *Id.* 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) $((\$100/100) \times (100-20) = \$80 \text{ a month})$. 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).

identified census blocks.²¹ At the end of the deployment period, we will apply section 54.320(d)(2) to recover support for all unserved locations, including the locations covered by the identified census blocks.²² Any additional issues related to the support recovery required by section 54.320(d)(2) of the Commission's rules will be addressed in a separate release.²³

Cebridge Telecom LA and Cable One VoIP. We consider Cebridge Telecom LA and Cable One VoIP to have defaulted on their RDOF service milestones in Louisiana. Each will receive no further RDOF auction support payments for Louisiana,²⁴ and they are subject to support recovery and non-compliance measures consistent with the Commission's rules.²⁵ We will also remove their Louisiana RDOF service areas from the Broadband Funding Map.²⁶ While Cebridge Telecom LA and Cable One VoIP will no longer receive RDOF support in Louisiana, they remain subject to recordkeeping rules for the high-cost program.²⁷

We disagree with Cable One VoIP's claim that it has met its buildout obligations in Louisiana.²⁸ The RDOF rules require that a carrier offer voice and broadband service meeting the relevant performance requirements for the remainder of the 10-year RDOF support term, subject to performance testing, reporting, and additional non-compliance measures if the carrier is unable to demonstrate compliance.²⁹ Because Cable One VoIP is withdrawing from RDOF in Louisiana, it will not be subject to

²¹ Assuming the same simplified example as in the prior footnote, if the carrier is in non-compliance Tier 2 so that we are required to withhold 15% a month (i.e., \$15, .15 x \$100), we would not withhold any additional monthly support since we have already stopped paying the carrier \$20 a month for defaulted census blocks, and \$20 exceeds the \$15 we are required to withhold. 47 CFR § 54.320(d)(1)(ii).

²² 47 CFR § 54.320(d)(2).

²³ *Id.*

²⁴ 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 *Cebridge Telecom LA Authorization Public Notice*, 37 FCC Rcd at 9317-24; *Cable One VoIP Authorization Public Notice*, 37 FCC Rcd at 7271-78 (providing a non-comprehensive summary of the RDOF requirements). After each support recipient notified WCB of its intent to withdraw from the RDOF support program, WCB instructed USAC to suspend the support recipient's RDOF support payments. 47 CFR §§ 54.320(c), 54.806(b).

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

²⁶ The census blocks covered by Cebridge Telecom LA and Cable One VoIP's authorized winning bids are available on the "Results" tab of the Auction 904 website at <https://www.fcc.gov/auction/904> in the document "Historical Authorized Auction 904 Long-Form Applicants Data."

²⁷ 47 CFR §§ 54.320(b), 54.806(b) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.").

²⁸ Cable One VoIP Withdrawal Letter at 1-3.

²⁹ See, e.g., 47 CFR §§ 54.313; 54.316; 54.320(d)(2), 54.806(c). See also *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018); 47 CFR § 54.313(a)(6).

performance testing and reporting in the state, and we will have no way to confirm that Cable One VoIP will continue to meet the required performance obligations for the remainder of the RDOF support term.

-FCC-

Appendix A

RiverStreet Communications of North Carolina, Inc.*CAF Phase II Auction Defaulted Census Blocks*

Authorized Support Recipient	FRN	State	Study Area Code	County	Census Block Number
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Buncombe	370210031041000
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619601002001
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619601002020
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619601002121
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619603002004
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619603002007
RiverStreet Communications of North Carolina, Inc.	0025165895	North Carolina	239033	Rutherford	371619603002021

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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: April 16, 2024

Released: April 16, 2024

By the Chief, Video Division, Media Bureau:

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed January 19, 2024 and amended on January 30, 2024, by Multimedia Holdings Corporation (Petitioner), the licensee of WTLV, channel 13, Jacksonville, Florida (Station or WTLV).¹ The Petitioner requests the substitution of channel 33 for channel 13 at Jacksonville, Florida (Jacksonville), in the Table of TV Allotments.²

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving persistent reception complaints it has received from viewers, and substantially improve the Jacksonville community's access to the Station's local news, emergency, NBC network, and other programming.³ The Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances.⁴ Additionally, the Petitioner notes that the Commission has observed "large variability in the performance (especially intrinsic gain) of indoor antennas available to consumers, with most antennas receiving fairly well at UHF and the substantial

¹ Petition of Multimedia Holdings Corporation for Rulemaking (filed Jan. 19, 2024, and amended Jan. 30, 2024) on file at LMS File No. 0000235765 (Petition and Amended Exh. B - Technical Statement). The Petitioner amended its Petition at the staff's request to provide an additional population loss and coverage analysis.

² 47 CFR § 73.622(j).

³ Petition at 1. According to the Petitioner, the Station "receives a steady stream of complaints from viewers unable to receive the station's over-the-air signal, despite being able to receive signals from the other local stations." *Id.* at 2-3 and Exhibit A (Viewer Feedback). Five of the seven channels allotted to Jacksonville are UHF channels. *See* 47 CFR § 73.622(j). WTLV's sister station WJXX, channel 10, Orange Park, Florida, is also part of the Jacksonville, Florida Designated Market Area. *Id.* at 3.

⁴ Petition at 2, citing *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, para. 42 (2010) (*Channel Sharing NPRM*).

majority not so well to very poor at high-VHF.”⁵ Petitioner further states that the Commission has recognized that although VHF reception issues are not universal, “environmental noise blockages affecting [VHF] signal strength and reception exist” and “[vary] widely from service area to service area.”⁶

3. An engineering statement provided by the Petitioner confirms that the proposed channel *33 contour would provide full principal community coverage to Jacksonville and would not cause impermissible interference to any station.⁷ Although an analysis provided by the Petitioner using the Commission’s *TVStudy* software tool indicates that the Station’s move to channel 33 will result in 274,303 persons no longer being located within the station’s noise limited service contour (NLSC),⁸ there are three other NBC affiliated TV stations whose NLSC overlaps with WTLV’s proposed NLSC. These stations serve all but 16,737 persons in the predicted loss area.⁹ Furthermore, according to the Petitioner, when the Commission’s *TVStudy* software is run for the Station’s licensed and proposed facilities with the “Study Area Mode” set to “unrestricted” to predict coverage outside the proposed NLSC, all viewers in the predicted loss area would continue to receive over-the-air NBC network programming.¹⁰ Thus, according to the Petitioner, although the proposed channel 33 facility would result in a reduction in the predicted population served, once service provided by other NBC stations and terrain-limited coverage predictions are taken into account, the proposed channel 33 facility will result in no loss of NBC service.¹¹

⁵ Petition at 2, citing *Channel Sharing NPRM*, 25 FCC Rcd at 16512, para. 44. We give no weight to the Petitioner’s argument that substituting UHF channel 33 for VHF channel 13 would improve the Station’s ability to offer ATSC 3.0 service over-the-air. The Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of deployment and the availability of consumer devices remains limited. See *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23-990 (MB Oct. 18, 2023); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order, DA 23-583 (MB July 5, 2023).

⁶ Petition at 2, citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, MD Docket No. 20-105, Report and Order, 35 FCC Rcd 4976, 4997, para. 52 (2020).

⁷ Petition at 5; Amended Exh. B – Technical Statement.

⁸ See 47 CFR § 73.619 (defining the noise limited service contour (NLSC) of full power television stations and the method of computation) (formerly §§ 73.625(b) and 73.683(c)). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations, the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (rel. Mar. 4, 2024); *Amendment of Part 73 of the Commission’s Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

⁹ Amended Exh. B at 3-4 and Appx. C. These stations are WSAV-TV, Savannah, Georgia; WNBW-DT, Gainesville, Florida; and WESH, Daytona Beach, Florida. The Petitioner used V-Soft Probe-5, Version 5.40a, and the staff confirmed the Petitioner’s results using the Commission’s *TVStudy* software, which is available with no charge to the public.

¹⁰ Amended Exh. B at 3-4 and Appx. C. Reception of a station’s signal does not stop at the edge of a station’s NLSC. This is particularly the case where there is excessively flat terrain, such as in this area of Florida. As such, all 16,737 persons in the predicted loss area will continue to be able to receive the WTLV signal.

¹¹ Petition at 5; Amended Exh. B – Technical Statement at pp. 3-6 (“When considering [Longley Rice] coverage applied to the lost contour areas, no population is predicted to be lost according to 2010 census data.”). See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Schenectady, New York)*, MB Docket No. 21-127, Notice of Proposed Rulemaking, 36 FCC Rcd 7073, 7074, para. 3 (MB Apr. 5, 2021) (“Petitioner submitted an analysis, using the Commission’s *TVStudy* software analysis program, demonstrating that after taking into account service provided by other CBS stations, all of the population located

(continued....)

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal for WTLV warrants consideration. Channel 33 can be substituted for channel 13 at Jacksonville as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the Commission's Rules (rules),¹² at coordinates 30-16'-25" N. and 81-33'-12" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the rules.¹³ Although the proposal is predicted to result in a loss of service to 274,303 persons, all of those persons would continue to receive over-the-air NBC network service either from other existing stations or while being located outside of WTLV's NLSC.¹⁴

5. We propose to substitute channel 33 for channel 13 for WTLV at Jacksonville with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Jacksonville, Florida	33	1000	290.4

6. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁵ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Jacksonville, Florida	*9, 13, 14, 18, 19, 20, *21	*9, 14, 18, 19, 20, *21, 33

IV. PROCEDURAL MATTERS

7. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.¹⁶ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹⁷

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

within WRGB's original post-DTV transition channel 6 noise limited contour will continue to receive CBS service, except for 30 people"); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Odessa, Texas)*, MB Docket No. 22-435, Notice of Proposed Rulemaking, 37 FCC Rcd 14159, 14159, para. 2 (MB Dec. 9, 2022) (taking into account terrain-limited coverage populations to suggest that the loss area is considered *de minimis* by the Commission).

¹² 47 CFR § 73.618(a) (formerly § 73.623(c)). See also *supra* n.8 and *Part 73 Amendment R&O* at para. 40.

¹³ 47 CFR §§ 73.622(a) (formerly §§ 73.616 and 73.623). See also *supra* n.8 and *Part 73 Amendment R&O* at para. 40.

¹⁴ See *supra* para. 3 and n.9.

¹⁵ 47 CFR § 73.622(j).

¹⁶ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

¹⁷ 47 CFR § 1.420(j).

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.¹⁸
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁹

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,²⁰ 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).²¹

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington D.C. 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.²²
 - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

10. *Service.* Pursuant to section 1.420 of the rules,²³ all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is

¹⁸ 47 CFR § 1.420(d).

¹⁹ 47 CFR § 1.420(g)(2).

²⁰ 47 CFR §§ 1.415, 1.419, and 1.420.

²¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²³ 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.²⁴ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Michael Beder, Esq.
Associate General Counsel
TEGNA Inc.
8350 Broad Street
Suite 2000
Tysons, Virginia 22102

11. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.²⁵ For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.²⁶ An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.²⁷ However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.²⁸ Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

12. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.²⁹ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

13. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

14. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³⁰ do not apply to a

²⁴ See 47 CFR §1.420(a), (b) and (c).

²⁵ 47 CFR §§ 1.1200 *et seq.*

²⁶ 47 CFR § 1.1208.

²⁷ 47 CFR § 1.1204(a)(10).

²⁸ 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

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

³⁰ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.³¹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³² In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.³³

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

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

V. ORDERING CLAUSES

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

18. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 24-112 and RM-11981 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³¹ 47 CFR § 73.622(j).

³² See 44 U.S.C. §§ 3501-3520.

³³ See 44 U.S.C. § 3506(c)(4).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-359

Released: April 17, 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 DigitalIPvoice, Inc

File No. EB-TCD-23-00035954

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 DigitalIPvoice, Inc (DigitalIPvoice). **Pursuant to section 64.1200(k)(4) of the Commission's rules, we hereby notify all U.S.-based voice service providers that if DigitalIPvoice 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 DigitalIPvoice, 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

- **DigitalIPvoice**

USTelecom's Industry Traceback Group (ITG)³ identified DigitalIPvoice as a gateway provider for substantial volumes of apparently unlawful robocalls, including calls related to student loans.⁴ Pursuant

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 Stephen Matlock, CEO, DigitalIPvoice Inc (Apr. 17, 2024) (DigitalIPvoice Letter). This letter is available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

³ USTelecom's Industry Traceback Group is the registered industry consortium selected pursuant to the TRACED Act, to conduct tracebacks to identify suspected bad actors. *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, Pub. L. No. 116-105 § 13(d), 133 Stat. 3274 (2019); *see also Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, EB Docket No. 20-22, Report and Order, DA 23-719, 2023 WL 5358422, at * 17, para. 43 (EB 2023).

⁴ *See* Traceback Consortium Subpoena Response (Dec. 20, 2023) (on file at EB-TCD-23-00035954) (ITG Subpoena Response).

to the CDL, DigitalIPvoice must: (1) promptly investigate the traffic identified in the CDL; (2) block the identified traffic; and (3) report the results of the investigation to the Bureau.⁵

The CDL also serves as notice that downstream U.S.-based voice service providers may begin blocking all calls from DigitalIPvoice's traffic 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 DigitalIPvoice fails to effectively mitigate illegal traffic, or (b) after 14 days DigitalIPvoice fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls.⁶ **U.S.-based voice service providers may block ALL call traffic transmitting from DigitalIPvoice'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.⁷ As part of its multi-pronged approach to combating illegal robocalls, the Commission has taken steps to encourage voice service providers to block suspected illegal robocalls.⁸ The Commission permits voice service providers to block traffic from other voice service providers that the Bureau has warned are transmitting suspected illegal robocalls.⁹ The Bureau has issued numerous "cease-and-desist" letters, warning voice providers that they were transmitting suspected illegal robocalls and could be subject to blocking.¹⁰ 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.¹¹ Failure to do so may require providers that are immediately downstream from the gateway provider to block all of its traffic if the gateway provider continues to transmit substantially similar traffic or fails to respond to the Bureau's CDL.¹²

⁵ DigitalIPvoice Letter at 3-4.

⁶ 47 CFR § 64.1200(k)(4).

⁷ Fed. Commc'ns Comm'n, *Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Jan. 19, 2024) ("Unwanted calls – including illegal and spoofed robocalls – are the FCC's top consumer complaint and our top consumer protection priority.").

⁸ See 47 CFR § 64.1200(k); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622, para. 19 (2020) (*July 2020 Call Blocking Order*) (establishing safe harbor for blocking traffic from bad-actor upstream voice service providers); *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4887-88, paras. 34-46 (2019) (blocking based on reasonable analytics with consumer opt-out and consumer whitelists); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017) (blocking of certain categories of calls highly likely to be illegal).

⁹ *July 2020 Call Blocking Order*, 35 FCC Rcd at 7628-29, paras. 36-39; see 47 CFR § 64.1200(k)(4).

¹⁰ These letters are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

¹¹ *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*).

¹² 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, FCC 23-37, 2023 WL 3686042, at *11, para. 37 (2023); *Gateway Provider Order*, 37 FCC Rcd at 6897-98, para. 74.

Nature of Apparently Unlawful Robocall Traffic. DigitalIPvoice is transmitting unlawful prerecorded calls to cell phones, apparently without the requisite consent from called parties,¹³ including calls related to student loan assistance.¹⁴ Between December 4, 2023, and December 11, 2023, DigitalIPvoice appeared in seven tracebacks as gateway provider for suspected illegal robocalls pertaining to student loan assistance.¹⁵ The calls played variations of the following prerecorded message:

Hello this is [name] from graduate support. Our records indicate you are eligible for an income driven program but never completed the required documents. If you want to proceed with this application we need to speak to you today. Please give us a call back at [phone number] to secure your benefits.¹⁶

Follow-Up Orders. The Bureau will issue an Initial Determination Order in the event that either: (a) DigitalIPvoice fails to respond to the CDL with respect to the calls for which DigitalIPvoice is the gateway provider; (b) the Bureau determines that the response is insufficient or that the traffic is illegal despite the provider's assertions; or (c) the Bureau determines that DigitalIPvoice is continuing to allow substantially similar traffic onto the U.S. network.¹⁷ DigitalIPvoice will have at least 14 days to respond to the Initial Determination Order.¹⁸ If DigitalIPvoice's response to the Initial Determination Order is insufficient, or DigitalIPvoice continues to allow substantially similar traffic onto the U.S. network, then the Bureau will publish a Final Determination Order in EB Docket No. 22-174.¹⁹ **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 DigitalIPvoice's traffic.**²⁰

Contact Information. For further information, please contact Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1318 or by email at Kristi.Thompson@fcc.gov; or 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

¹³ See 47 U.S.C. § 227(b); 47 CFR § 64.1200(a).

¹⁴ See ITG Subpoena Response, *supra* note 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 CFR § 64.1200(n)(2)(ii).

¹⁸ *Id.*

¹⁹ *Id.* § 64.1200(n)(2)(iii).

²⁰ *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.*



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-362

Released: May 1, 2024

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

CC Docket No. 02-6
WC Docket No. 02-60
WC Docket Nos. 08-71, 10-90, 18-143

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

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

Dismissed as Moot³

Keystone Oaks School District, PA, Application No. 221019033, Request for Waiver, CC Docket No. 02-6 (filed April 10, 2024)

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 See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where invoicing records demonstrate that the entity was fully compensated for the funding it requested and all submitted requests for reimbursement were funded).

Sharon City School District, PA, Application No. 221020954, Request for Waiver, CC Docket No. 02-6 (filed April 10, 2024)

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

Abba Technologies, Inc. (DaySpring Christian Academy), CO, Application No. 211038984, Request for Waiver, CC docket No. 02-6 (filed Sept. 21, 2021)

Dismissed on Reconsideration⁵

All My Children Day Care, NY, Application No. 201044216, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 26, 2020)

Granted⁶

Competitive Bidding – Price as Primary Factor⁷

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

⁵ *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

Previously, we denied All My Children Day Care's request for a waiver of the deadline to file its application because the school owed a debt to USAC and was on "red light" status. *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90; Public Notice, DA 20-792 (WCB July 31, 2020). On reconsideration, All My Children Day Care raises a new argument. It argues that a waiver is warranted and its application should be funded because it has since repaid the debt and is no longer on red light status. We note that subsequent repayment of the delinquent amount that is in violation of the red light rule does not reverse the earlier dismissal of the application. *See Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd. 13122, 13126, para 6 (WCB 2013) (*Net56 Inc. Order*) (denying applications for E-Rate funding even though the red light debt had been satisfied).

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).

Capital City Public Charter School, DC, Application Nos. 231030634, 211020285, Request for Waiver, CC Docket No. 02-6 (filed Feb. 6, 2024, Feb. 23, 2024)

*Granting Additional Time to Respond to USAC Inquiry*⁸

Municipio De Luquillo, PR, Application Nos. 181039465, 181039964, Request for Waiver, CC Docket No. 02-6 (filed July 1, 2020)

Texas Torah Institute, TX, Application No. 231038512, Request for Waiver, CC Docket No. 02-6 (filed Dec. 11, 2023)

*Improper Service Provider Involvement – Potential Conflict of Interest*⁹

Big Horn County School District # 2, WY, Application No. 161043937, Request for Review and Petition for Waiver, CC Docket No. 02-6 (filed Feb. 23, 2024)

Pine Cove Consulting, LLC (Big Horn County School District # 2), WY, Application No. 161043937, Request for Review and Petition for Waiver, CC Docket No. 02-6 (filed Feb. 26, 2024)

*Late-Filed FCC Form 471 Applications – Filed Within 14 Days of the Close of the Window*¹⁰

(Continued from previous page)

⁷ 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, 6114-15, para. 9 (WCB 2011) (*Allendale County School District Order*) (granting appeals where the record demonstrated that applicants gave the most weight to price during the bid evaluation process).

⁸ See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 1876 (WCB 2014) (*Ben Gamla Palm Beach Order*) (granting petitioners' requests for review that were denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame).

⁹ See *Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18799, para. 86, n.249 (2010) (*Schools and Libraries Sixth Report and Order*) (explaining that "an existing relationship between an applicant and its existing service provider does not violate the rule that the competitive bidding process remain fair and open."); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16779, para. 231, n.591 (2012) (*Healthcare Connect Order*) (explaining that service providers who submit bids are prohibited from preparing, signing or submitting an applicant's documents and noting that this "does not prohibit an [applicant] from obtaining information on its current services from its existing service provider."). See also *Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 2784, 2788-89, paras. 12-14 (*Caldwell Parish Order*) (WCB 2008) (finding no violation of the competitive bidding rules where applicants provided evidence of no improper service provider involvement, including sworn statements under penalty of perjury that the service provider did not improperly assist with the preparation of the FCC Form 470).

¹⁰ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (*Academy of Math and Science Order*) (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline).

5280 Consortium, Acanc Consortium, Ascent Classical Academy Dougco Consortium, Aspen Community School Consortium, Berkeley Hall School, Carbondale Community School Consortium, Cudahy School District, Detroit Service Learning Academy, Gals Boys Consortium, Holy Cross Catholic Academy, Lake Mills Comm School District, Morton High School District 201, Omar D Blair School, Prospect Ridge Academy, Ricardo Flores Magon Academy, Talmudical Academy-Baltimore, Texas Torah Institute, University Prep Steele Street Inc., University Preparatory School, Vega Collegiate Academy Consortium, Vista Charter School, Application Nos. 241039528, 241039532, 241039889, 241039534, 241039617, 241039613, 241039614, 241039733, 241039615, 241039616, 241039535, 241039553, 241039552, 241039729, 241039732, 241038924, 241039608, 241039610, 241039609, 241039735, 241039737, 241039879, 241039850, 241039611, 241039839, 241039906, 241039825, 241039901, 241039796, 241039809, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

A+ Charter Schools, AZ, Application No. 241039264, Request for Waiver, CC Docket No. 02-6 (filed Mar. 31, 2024)

Aberdeen Public Library, ID, Application No. 241039399, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Academia Avance, CA, Application No. 241036130, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Academy of the Sacred Heart, MO, Application No. 241039270, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Achievement House Charter School, PA, Application No. 241039517, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Akiak Tribal Library, AK, Application No. 241039200, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Alachua County Public Schools, FL, Application No. 241039297, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024, supplemented Apr. 2, 2024)

Alba Public School, MI, Application No. 241014543, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Albion Municipal Library, IA, Application No. 241039400, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Alief Montessori Community School, TX, Application No. 241039245, Request for Waiver, CC Docket No. 02-6 (filed Mar. 31, 2024)

American Classical Academy Rutherford, TN, Application Nos. 241028860, 241028864, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Anderson County School District 1, SC, Application Nos. 241039668, 241039700, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Anna Porter Public Library, TN, Application Nos. 241039661, 241039679, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)¹¹

Appalachia Intermediate Unit 10 Consortium, PA, Application No. 241039321, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Appomattox County School District, VA, Application No. 241039169, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Archdiocese of Atlanta Schools, GA, Application No. 241039684, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Arkansas County Library, AR, Application No. 241039638, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Arkansas County Library, AR, Application No. 241039376, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Astoria Community Unit School District 1, IL, Application No. 241039426, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Austin Preparatory School, MA, Application No. 241039758, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Basis DC, DC, Application No. 241039790, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Bas Mikroh Girls School, NY, Application No. 241039704, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2024)

Bergen County Technical Schools and Special Services, NJ, Application No. 241024249, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Berkley Accelerated Middle School, FL, Application No. 241039591, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Berks County Intermediate Unit #14, PA, Application No. 241039255, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Bethel Public Schools, OK, Application No. 241026310, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Bethlehem Academy School, MN, Application No. 241039112, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

BHK Child Development, MI, Application No. 241039394, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

¹¹ Anna Porter Public Library inadvertently listed an incorrect application number in its waiver request. We are including the correct FCC Form 471 number in this Public Notice.

Big Apple Institute, NY, Application No. 241039456, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Bishop Kenny High School, FL, Application No. 241039834, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Bishop Louis Reicher Elementary School, TX, Application No. 241039097, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Blessed Sacrament Catholic School, UT, Application No. 241039186, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Blytheville School District 5, AR, Application No. 241039432, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024, amended Apr. 10, 2024)

Bnos Chaya, NY, Application No. 241039175, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Boise City Schools, OK, Application Nos. 241039273, 241039277, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Borden-Henryville School Corporation, IN, Application No. 241039363, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Bosco System, IA, Application No. 241038393, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Bracken County Public Library, KY, Application Nos. 241039455, 241039453, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2024)

Briggsdale School District R E 10 J, CO, Application No. 241039168, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Brookhaven Innovation Academy, GA, Application No. 241039686, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Bruce Guadalupe Community School, WI, Application Nos. 241039262, 241039259, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Buellton Union School District, CA, Application No. 241022935, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Burgundy Farm Country Day School, VA, Application No. 241039631, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Butner Independent School District I015, OK, Application No. 241039251, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Calvary Chapel Christian School, PA, Application No. 241039140, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Canton Area School District, PA, Application No. 241039126, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Canton Area School District, PA, Application No. 241039127, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Canton Union School District 66, IL, Application No. 241023334, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Carroll County Public Library, KY, Application No. 241039396, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Carroll County School District, VA, Application No. 241039318, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Carter County Public Library District, KY, Application No. 241039663, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Cascades Academy, OR, Application No. 241039497, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Catholic School Region of Central Westchester, NY, Application No. 241039448, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Catholic School Region of Rockland, NY, Application No. 241039829, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Cedar Springs Public Schools, MI, Application No. 241037447, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Central Cons School District 22, NM, Application No. 241039720, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Central Vermont Supervisory Union #68, VT, Application No. 241039188, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Champion Christian School District, PA, Application Nos. 241039305, 241028850, 241028721, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Charter School of New Castle, DE, Application No. 241039671, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Child Care Resource Center, CA, Application Nos. 241038806, 241038818, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Chino Valley Unified School District, CA, Application No. 241039761, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Claremore Christian School, OK, Application No. 241039131, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Clark County School District, NV, Application No. 241039598, 241039660, 241039672, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Clarkton School District C-4, MO, Application No. 241039220, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Clearfield County Career And Technology Center, PA, Application No. 241039348, 241039347, Request for Waiver, CC Docket No. 02-6 (filed Apr. 7, 2024)

Clearwater R-1 School District, MO, Application No. 241039289, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Climax Springs School District R 4, MO, Application No. 241039838, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

CLM Community Action Agency, MI, Application No. 241036217, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

CLM Community Action Agency, MI, Application No. 241039765, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Colchester School District, VT, Application Nos. 241020253, 241039314, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Collinsville Community Unit School District #10, IL, Application No. 241039387, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Colorado City Unified School District 14, AZ, Application Nos. 241039187, 241039195, 241039224, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Commission on Economic Opportunity Administrative Offices, NY, Application No. 241039680, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Community Library, WI, Application Nos. 241039504, 241039491, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Cong. Bnai Yoel, NY, Application No. 241039263, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Contoocook Valley Regional School District, NH, Application No. 241039623, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Coulterville Unit School District 1, IL, Application No. 241039324, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Custer County Consolidated School District C1, CO, Application No. 241034731, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Darrington School District 330, WA, Application No. 241039350, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Davenport Community School District, IA, Application No. 241039599, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

David Cargo Library at Villanueva - El Valle Community Center, NM, Application No. 241039266, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Defiance City Schools, OH, Application No. 241039327, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Deptford Township School District, NJ, Application No. 241039793, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Digital Arts and Technology Academy, NM, Application No. 241039736, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Dilworth Glyndon Felton I.S.D. 2164, MN, Application Nos. 241039757, 241039753, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Dixon School District R 1, MO, Application Nos. 241039225, 241039226, 241039227, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2024)

Doctors Charter School of Miami Shores, FL, Application No. 241039891, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Durango School District 9-R, CO, Application No. 241039713, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Duval County School District, FL, Application No. 241039464, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Dynamic Dyslexia Design -The 3-D School District, MS, Application No. 241036586, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

East Orange Public Library, NJ, Application No. 241039682, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

East Valley School District 90, WA, Application Nos. 241039447, 241039446, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Edgartown School District, MA, Application No. 241039155, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Edgewood Community Library, NM, Application No. 241039094, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Elgin School District U-46, IL, Application Nos. 241039484, 241039487, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Elko County School District, NV, Application No. 241022163, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Erie 1 BOCES, NY, Application No. 241039149, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Erie 1 BOCES, NY, Application No. 241039492, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Estill County Public Library, KY, Application No. 241039600, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024, duplicate filed Apr. 12, 2024)

Evesham Township School District, NJ, Application No. 241039858, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Evesham Township School District, NJ, Application No. 241039854, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Evolution Academy Charter School, TX, Application Nos. 241039165, 241039111, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2024)

Exeter-West Greenwich Regional District, RI, Application No. 241039310, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Fairland Local School District, OH, Application No. 241034859, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Ferndale School District 502, WA, Application No. 241039772, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Focus Learning Academy Of Northern Columbus, OH, Application No. 241039478, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Fork Union Military Academy, VA, Application No. 241039849, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Fulton County Public Library, KY, Application No. 241023005, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Gallup-McKinley County School District, NM, Application No. 241000954, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

General McLane School District, PA, Application No. 241008811, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Gill-Montague Regional School District, MA, Application No. 241036998, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Golden Plains Unified School District, CA, Application No. 241039777, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Grants Pass School District 7, OR, Application No. 241039657, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Greater Latrobe School District, PA, Application No. 241039674, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Great Rivers Educational Cooperative, AR, Application No. 241039664, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Green County Public Library, KY, Application No. 241039655, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Greenfield Union School District, CA, Application No. 241039875, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Greenwood School District 50, SC, Application No. 241039118, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Groom Independent School District, TX, Application No. 241039214, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Halls Public Library, TN, Application No. 241037343, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Hampton County School District, SC, Application No. 241039760, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Hancock County Public Library, KY, Application No. 241039510, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Hardin County Public Library District, KY, Application No. 241039748, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Harlan County Public Library, KY, Application No. 241039150, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Harriet Tubman Charter School, NY, Application No. 241039649, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Hasbrouck Heights School District, NJ, Application No. 241010861, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Hatchie River Regional Library, TN, Application No. 241039317, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Hazelwood School District, MO, Application No. 241039779, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Hazlehurst City School District, MS, Application No. 241038333, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Heart of Ohio Classical Academy, OH, Application No. 241028849, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Henry Hudson Regional School District, NJ, Application No. 241039428, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Highlands County School District, FL, Application No. 241021521, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

High Plains Technology Center, OK, Application No. 241039602, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Hilton Head Preparatory School, SC, Application No. 241039258, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Holly Academy, MI, Application No. 241039703, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Holy Name School, FL, Application No. 241039351, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024, duplicate filed Apr. 7, 2024)

Holy Trinity School/DM, IA, Application No. 241039402, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)¹²

Hondo Public Library, TX, Application No. 241020042, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Hope For Hyndman Charter School, FL, Application No. 241039352, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024, duplicate filed Apr. 7, 2024)

Islamic Foundation School, IL, Application No. 241039231, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2024)

Jefferson County Public Library, CO, Application Nos. 241039143, 241039229, 241039230, 241039170, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Jefferson Elementary School District, CA, Application No. 241039724, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Jersey City Public Schools, NJ, Application No. 241039593, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

John Muir Charter Schools, CA, Application No. 241039260, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Johnson City Public Library, TN, Application Nos. 241039481, 241039479, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Kamalani Academy, HI, Application No. 241039705, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

¹² Holy Trinity School/DM inadvertently listed an incorrect application number in its waiver request. We are including the correct FCC Form 471 number in this Public Notice.

Kearsarge Reg School District, NH, Application No. 241039629, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Kelso School District 458, WA, Application No. 241039588, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Kenosha Public Library, WI, Application Nos. 241039178, 241039177, 241039181, 241039174, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Kingsburg Joint Union High School District, CA, Application No. 241039781, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Knox City-O'Brien Independent School District, TX, Application No. 241036813, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Knoxville School District 202, IL, Application No. 241039379, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

La Salle Public Elementary Schools #122, IL, Application No. 241039378, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Legends Academy, FL, Application No. 241039202, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Lewiston School Department, ME, Application No. 241039667, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Lexington Public Library, KY, Application No. 241039651, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Life Line Charter School, CA, Application No. 241039873, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

LINC Academy – Columbus, OH, Application No. 241028835, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Lindenwold Borough School District, NJ, Application No. 241039213, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Little Flower School District, NY, Application No. 241005063, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Living Word Lutheran High School, WI, Application No. 241039401, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Louisville Free Public Library, KY, Application No. 241039330, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Louisville Free Public Library, KY, Application No. 241039664, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Lower Township Elementary School District, NJ, Application No. 241039773, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Lubavitch Girls High School, IL, Application No. 241039698, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Lummi Nation School, WA, Application No. 241039900, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Lutheran High Northeast, NE, Application No. 241039404, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Maltman Memorial Library, NE, Application No. 241039636, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Maple Dale-Indian Hill School District, WI, Application No. 241039581, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Margaretta Local School District, OH, Application No. 241039568, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Marion County Public Library District, KY, Application No. 241039567, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Marquette-Alger RESA Consortium, MI, Application No. 241033960, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Marshall School District, WI, Application No. 241039624, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Maryknoll School, HI, Application Nos. 241039886, 241039870, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Medina County J V S D, OH, Application No. 241039210, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Menaul School, NM, Application No. 241039218, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Meridian Community United School District, IL, Application No. 241037140, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Meriden-New Britain-Berlin Young Mens Christian Association Inc., CT, Application No. 241039743, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Mexicayotl Academy, Inc., AZ, Application No. 241039438, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Mingus Union High School District 4, AZ, Application No. 241039180, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Mitchell School District 55, OR, Application No. 241039435, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Monroe County School District, AL, Application No. 241022188, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Montana State School for Deaf & Blind, MT, Application No. 241039145, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Montclair Public School District, NJ, Application No. 241039742, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Morgan County Public Library, KY, Application No. 241039597, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Nativity BVM High School, PA, Application No. 241039802, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Nelson County Public Library, KY, Application No. 241039276, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Newman Catholic School System/Mason City, IA, Application No. 241039571, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

New London Community School District, IA, Application No. 241039139, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

New Richmond School District, WI, Application No. 241039444, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

New Visions AIM Charter High School II, NY, Application Nos. 241039439, 241039437, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Nezperce School District, ID, Application No. 241029268, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

NJ Juvenile Justice Commission's Office of Education, NJ, Application No. 241039162, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Nora Cronin Presentation Academy, NY, Application No. 241039307, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

North Brookfield School District, MA, Application No. 241039375, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Northeast Ohio Classical Academy, OH, Application No. 241028808, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

North Shore Hebrew Academy High School, NY, Application No. 241039691, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Oil Region Library Association, PA, Application No. 241039249, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Okefenokee Regional Library, GA, Application No. 241039208, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Omega Alpha Academy, AZ, Application No. 241039271, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Opelika City School District, AL, Application No. 241039380, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Orange Board Of Education, NJ, Application No. 241038772, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Owen County Public Library, KY, Application Nos. 241039267, 241039269, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Palm Desert Branch Library, CA, Application No. 241039641, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Peace Inc., NY, Application No. 241039693, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Pendleton County Public Library, KY, Application No. 241039386, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Pennsauken Twp School District, NJ, Application No. 241039769, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Perry County Public Library, KY, Application Nos. 241039570, 241039573, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Persistence Preparatory Academy, NY, Application No. 241039797, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Peters Township School District, PA, Application No. 241027022, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Petersburg City Public Schools, VA, Application No. 241004120, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Philipsburg Public Library, MT, Application No. 241039408, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Pike County Public Library, PA, Application No. 241039451, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Pompton Lakes School District, NJ, Application No. 241039295, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Potosi School District, WI, Application No. 241039129, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Pribilof School District Consortium, AK, Application No. 241039512, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Public Schools of Petoskey, MI, Application No. 241039511, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Ramapo-Indian Hills Regional School District, NJ, Application Nos. 241039566, 241039678, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Reicher Catholic High School, TX, Application No. 241039098, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Regional Office of Education Champaign, IL, Application No. 241039580, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Region 17 Technology Consortium, TX, Application No. 241039480, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Richmond Memorial Library, NY, Application Nos. 241039304, 241039133, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Rise Prep Mayoral Academy, RI, Application No. 241039345, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Rochester School District, NH, Application No. 241039605, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024, duplicate filed Apr. 8, 2024)

Rock Falls Township High School, IL, Application No. 241039372, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Rock Valley Community School District, IA, Application No. 241039142, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

Rocky Bayou Christian School, FL, Application No. 241039316, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Roselle Catholic High School, NJ, Application No. 241039763, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Rosholt School District, WI, Application No. 241039293, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Rowlett Academy, FL, Application No. 241039475, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Saddle Brook Board of Education, NJ, Application No. 241039626, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Saginaw Public School District, MI, Application No. 241039084, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Salida School District R-32-J, CO, Application No. 241039669, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024, amended Apr. 10, 2024)

San Diego Cooperative Charter School, CA, Application No. 241039411, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024, duplicate filing Apr. 4, 2024)

San Diego County Office of Education, CA, Application No. 241039709, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

San Lorenzo Unified School District, CA, Application No. 241039594, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Schaumburg Township District Library, IL, Application No. 241039365, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

School Administrative District 12, ME, Application No. 241039652, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

School Administration Unit 24-Consortium, NH, Application No. 241039236, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

School District of South Milwaukee, WI, Application Nos. 241038176, 241037764, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Scott County Public Library, KY, Application No. 241039589, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Ser-Ninos Charter School, TX, Application No. 241039191, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Sesser-Valier School District 196, IL, Application No. 241039247, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Seymour Public Library, CT, Application No. 241039392, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Sharon City School District, PA, Application Nos. 241039412, 241039410, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Sheridan School District 2, CO, Application No. 241017887, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)¹³

Shore Up/Salisbury 1 Head Start Center, MD, Application No. 241035975, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

¹³ Sheridan School District 2 inadvertently listed an incorrect application number in its waiver request. We are including the correct FCC Form 471 number in this public notice.

Snyder County Library, PA, Application No. 241039751, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

South Central Regional Library Council, NY, Application No. 241039156, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

South Jamaica Center For Children and Parents, Inc., NY, Application No. 241039837, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

South Jamaica Center For Children and Parents, Inc., NY, Application No. 241039787, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

South Park School District, PA, Application No. 241039409, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024, duplicate filed Apr. 7, 2024)

South Side Area School District, PA, Application No. 241039445, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Southeast Ohio Classical Academy, OH, Application No. 241028822, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Spencer County Public Library, KY, Application No. 241039579, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

Stanwood Camano School District 401, WA, Application No. 241039353, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Staunton City School District, VA, Application No. 241039246, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Stevens County Rural Library District, WA, Application No. 241039212, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

St. Benedict School, PA, Application No. 241039413, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024, duplicate filed Apr. 7, 2024)

St. Croix Consolidated Catholic School, MN, Application No. 241010936, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

St. Felicitas Catholic School, CA, Application No. 241039706, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024, supplemented Apr. 15, 2024)

St. Joseph Notre Dame High School, CA, Application No. 241038587, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

St. Mary's Catholic School, LA, Application No. 241039197, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

St. Michael School, PA, Application No. 241039414, Request for Waiver, CC Docket No. 02-6 (filed Apr. 7, 2024)

St. Paul Evangelical Lutheran School, IL, Application No. 241039306, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

St. Stephen of Hungary School, NY, Application No. 241039430, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

St. Theresa School, NY, Application No. 241039458, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Sullivan County Library, TN, Application No. 241039354, Request for Waiver, CC Docket No. 02-6 (filed Apr. 7, 2024)

The Allegro School Inc., NJ, Application No. 241039814, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

The Bronx Charter School For Better Learning, NY, Application No. 241039204, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

The Bronx Charter School For Better Learning, NY, Application No. 241039205, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

The Bronx Charter School For Better Learning, NY, Application No. 241039206, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

The Edge Charter School, AZ, Application No. 241039828, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

The Episcopal Cathedral School, PR, Application Nos. 241039252, 241039253, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

The Montessori School of Englewood Charter, IL, Application No. 241039302, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

The Mountain Community School, NC, Application No. 241038946, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Toddler Time Child Care Center, MI, Application No. 241039499, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Trevor Day School, NY, Application No. 241039298, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Trinity Charter Schools, TX, Application No. 241039279, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Trinity Christian Academy, FL, Application No. 241039883, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Unicoi County Public Library, TN, Application Nos. 241039766, 241039774, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

Union Ridge Elementary School, IL, Application No. 241038718, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Uniondale Union Free School District, NY, Application No. 241004927, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Villisca Public Library, IA, Application No. 241039371, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

Warren County R-III School District, MO, Application No. 241039250, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2024)

Warren County School District, PA, Application No. 241039670, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Warren County School District, PA, Application No. 241039675, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Waynesboro City School District, VA, Application No. 241039331, Request for Waiver, CC Docket No. 02-6 (filed Apr. 3, 2024)

West Burlington Independent School District, IA, Application No. 241039425, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

West Central Valley Community School District, IA, Application No. 241039164, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

West Deanery Unified Catholic Schools, IN, Application No. 241039332, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

West End School District Re 2, CO, Application No. 241039476, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2024)

West Hurley Public Library, NY, Application No. 241039515, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2024)

Westchester Community Opportunity Program Inc., NY, Application No. 241039323, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Westchester Community Opportunity Program Inc., NY, Application No. 241039498, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)

White Pigeon Township Library, MI, Application No. 241037421, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Whitley County Public Library, KY, Application Nos. 241039322, 241039319, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2024)

Wild Plum Center for Young Children and Families, Inc., CO, Application No. 241039280, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Wild Plum Center for Young Children and Families, Inc., CO, Application No. 241039503, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024)

Wishram School District 94, WA, Application No. 241039463, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2024)

Young Audiences Charter Schools, LA, Application No. 241039692, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

*Late-Filed FCC Form 471 Applications – Filed Within a Reasonable Period of Time Despite Technical Issues*¹⁴

Dow City Public Library, IA, Application No. 241039577, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

Jonesboro School District, AR, Application No. 241038299, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

*Ministerial and/or Clerical Errors*¹⁵

Anna Julia Cooper Episcopal School, VA, Application No. 231003881, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2024, supplemented Apr. 14, 2024)

MAAC Agency, CA, Application No. 221035226, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2024, supplemented Apr. 11 and 15, 2024)

Santa Fe Public Schools, NM, Application No. 191001114, Request for Waiver, CC Docket No. 02-6 (filed Oct. 29, 2020, supplemented Apr. 12, 2024)

Warren County, NY, Application No. 231005450, Request for Waiver, CC Docket No. 02-6 (filed Oct. 1, 2023, supplemented Oct. 15, 2023 & Feb. 1, 2024)

*Ministerial and/or Clerical Errors – Invoicing*¹⁶

¹⁴ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by A.C.E. Charter High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15907, 15908, para. 2 (WCB 2012) (*A.C.E. Charter High School Order*) (finding special circumstances existed to justify granting waiver requests where, for example, petitioners filed within a reasonable period of the filing window's close despite a school reorganization or a technical problem interfacing with USAC's online system).

¹⁵ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools*, CC Docket No. 02-6, Order, 25 FCC Rcd at 17319, 17319-20, para. 2, nn. 9, 17 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant or USAC entered the wrong service start date or omitted service from source documents onto its FCC Form 471); *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521 n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to correct a price from the source list on its FCC Form 471).

¹⁶ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, paras. 8-10 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (permitting applicants to correct
(continued....))

Forward Edge, LLC (Springfield City School District and Hilliard City School District), OH, Application Nos. 221012183, 221026801, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2024)

*Reconsidering Bureau Decision and Granting the Appeal*¹⁷

Gifft Hill School, VI, Application No. 201045156, Request for Review, CC Docket No. 02-6 (filed Jan. 25, 2021)

Granted in Part

*Late-Filed FCC Form 471 Applications*¹⁸

Department of Management Services, FL, Application Nos. 241039711, 241039647, 241039932, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Denied

*Denying Request to Change Application*¹⁹

San Antonio Independent School District, TX, Application No. 181037898, Request for Waiver, CC Docket No. 02-6 (filed Dec. 18, 2020)

*Equipment Exceeds Reasonable Needs*²⁰

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clerical errors related to invoicing, including where petitioners inadvertently listed the incorrect service delivery date).

¹⁷ In the *April 2024 USF Streamlined Resolution PN*, we denied an appeal filed by Gifft Hill School, finding that USAC's internal processing system was not able to process its partial-month funding commitment. *See Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, and 21-93, Public Notice, DA 24-296 (WCB April 1, 2024) (*April 2024 USF Streamlined Resolution PN*). We now reconsider on our own motion the denial of that appeal. *See* 47 CFR § 1.113(a) (allowing reconsideration of Bureau decisions within 30 days of public notice of the action). We now find, in this limited situation that involved the creation of a second funding window to help pay for faster Internet service to boost capacity needed during the COVID-19 pandemic, that Gifft School District should receive the additional E-Rate funding to pay for the more expensive Internet access services it purchased for the latter part of October 2020 and direct USAC process reimbursement for these approved services.

¹⁸ We grant Department of Management Services' request pertaining to SLD Nos. 241039711, 241039647. *See, e.g., Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days of the filing window deadline). However, we deny Department of Management Services' request pertaining to SLD No. 241039932. *See, e.g., Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13 (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying a waiver of the Commission's rules).

¹⁹ *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1924, 1925, para. 1 (WCB 2012) (*Assabet Valley Order*) (finding petitioners had not demonstrated good cause to justify waivers permitting changes to the applicants' E-Rate applications).

²⁰ *See Request For Waiver And Review Of A Decision Of The Universal Service Administrator By Alamogordo Public School District Alamogordo, New Mexico, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 7982, 7984 paras. 5-6 (WCB 2014) (explaining that extraneous equipment is not eligible for E-Rate support).

Yeshiva Ohr Hatorah, NY, Application No. 832876, Request for Review, CC Docket No. 02-6 (filed Jan. 14, 2014)

*Ineligible Services*²¹

Grove Public Schools, OK, Application No. 201042040, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2020)

Yonkers Public Schools, NY, Application Nos. 528593, 536082, 535576, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2011)

*Late-Filed FCC Form 471 Applications*²²

Academy of Math And Science – Little Rock, AR, Application No. 241039943, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2024)

Emmanuel Christian Academy, OH, Application No. 241039538, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Heritage Christian Schools, WI, Application No. 241039936, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2024)

HMS School for Children with Cerebral Palsy, PA, Application No. 241039945, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Independence School District, WI, Application No. 241039947, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Most Blessed Sacrament Catholic School, MD, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Northern Cass District 97, Application No. 241039643, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

St. Louise School, WA, Application No. 241012912, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2024)

Yukon Independent School District 27, OK, Application No. 241028548, Request for Waiver, CC Docket No. 02-6 (filed Apr. 9, 2024, supplemented Apr. 22, 2024)

*Late-Filed Invoice or Invoice Deadline Extension*²³

²¹ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by AllWays, Inc. (Prairie Hills School District 144); Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1968, 1968-69, para. 1 (WCB 2012) (*AllWays, Inc. Order*) (upholding denials of funding requests for services that are not eligible for E-Rate support).

²² See, e.g., *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13 (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying a waiver of the Commission's rules).

Appalachia Intermediate Unit 8, PA, Application No. 221033878, Request for Waiver, CC Docket No. 02-6 (filed April 9, 2024)

Avery-Mitchell-Yancey Regional Library, NC, Application No. 221008016, Request for Waiver, CC Docket No. 02-6 (filed Mar. 18, 2024)

Bald Eagle Area School District, PA, Application No. 221018292, Request for Waiver, CC Docket No. 02-6 (filed April 9, 2024)

DecoTech Systems, Inc. (Moraga Elementary School District), CA, Application No. 211013140, Request for Waiver, CC Docket No. 02-6 (filed April 5, 2024)

Kiryas Joel Union Free School District, NY, Application No. 221012250, Request for Waiver, CC Docket No. 02-6 (filed Mar. 25, 2024)

Leroy Community School District, IL, Application No. 211034389, Request for Waiver, CC Docket No. 02-6 (filed Mar. 25, 2024)

Moulton Independent School District, TX, Application Nos. 161046429, 171037294, Request for Waiver, CC Docket No. 02-6 (filed Aug. 14, 2020)

Region 18 ESD – Wallowa County, OR, Application Nos. 221027046, 221027972, 221028118, Request for Waiver, CC Docket No. 02-6 (filed April 5, 2024)

Riverton Unified School District 404, KS, Application No. 221004643, Request for Waiver, CC Docket No. 02-6 (filed Feb. 12, 2024)

Rockwood Area School District, PA, Application No. 221020937, Request for Waiver, CC Docket No. 02-6 (filed April 9, 2024)

Saint John the Evangelist School, PA, Application No. 221020929, Request for Waiver, CC Docket No. 02-6 (filed April 10, 2024)

Stewart County Public Library, TN, Application No. 221037969, Request for Review, CC Docket No. 02-6 (filed Mar. 14, 2024)

Whitman County Library, WA, Application No. 211007673, Request for Waiver, CC Docket No. 02-6 (filed April 15, 2024)

*Untimely Filed Appeals or Waiver Requests*²⁴

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²³ 47 CFR § 54.514. *See also, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (*Ada School District Order*) (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances for a waiver of the Commission's rules).

²⁴ *See, e.g., Requests for Review of the Decisions of the Universal Service Administrator by Agra Public Schools I-134; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, 5823, para. 1 (WCB 2014) (*Bound Brook School District Order*) (denying requests for review and/or waiver on the grounds that the petitioners failed to: (1) submit their appeals (continued....)

Hennepin County Library, MN, Application No. 231024349, Request for Waiver, CC Docket No. 02-6 (filed April 3, 2024)

Jet Web Communications, LLC (Rio Hondo ISD), TX, Application No. 211040307, Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2024)²⁵

Jet Web Communications, LLC (Rio Hondo ISD), TX, Application No. 211040329, Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2024)²⁶

Rural Health Care Program
WC Docket No. 02-60

Granted

*Waiver of Application Filing Deadline*²⁷

Mendocino Coast Clinics, Inc., and ENA Healthcare Services, LLC, CA, Request for Waiver, WC Docket No. 02-60, Funding Request No. 2220901 (filed Aug. 1, 2022)

*Waiver of Information Request Deadline*²⁸

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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).

²⁵ Jet Web Communications, LLC had an invoice rejected in July 2023 and is seeking an invoice deadline extension to refile invoices for services provided to Rio Hondo ISD. In addition to this waiver request being requested more than 60 days from the date of the invoice denial, we also note that for this application, SLD No. 211040307, the applicant has not filed an FCC Form 486 which is required to allow the invoicing process to proceed.

²⁶ Jet Web Communications, LLC had an invoice rejected in July 2023 and is seeking an invoice deadline extension to refile invoices for services provided to Rio Hondo ISD. In addition to this waiver request being requested more than 60 days from date of the invoice denial, we also note that for this application, SLD No. 211040329, the applicant filed an FCC Form 486 after the allowable deadline. As a result of the late submission, the adjusted service start date was modified to March 13, 2023.

²⁷ See *Rural Health Care Support Mechanism, Promoting Telehealth in Rural America*, WC Docket Nos. 02-60, 17-310, Order, 36 FCC Rcd 7051 (WCB 2021) (relaxing administrative deadlines due to the continuing impact of COVID-19 in order to "ensure that telecommunications service providers nationwide will receive sufficient Telecom Program support for funding years 2021 and 2022."). Mendocino Coast Clinics (Mendocino) and ENA Healthcare Services jointly request a waiver for the deadline for filing funding applications for funding year 2022. One of Mendocino's funding requests for that funding year was inadvertently not timely filed. The unfiled nature of the request was only discovered after the filing deadline, because Mendocino's executive director, the person responsible for filing the funding request, contracted "post-COVID conditions" (*i.e.*, long COVID) that resulted in her absence from work for a five-month period prior to and immediately following the filing deadline. We direct USAC to consider the funding request using its normal procedures.

²⁸ See, *e.g.*, *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 37 FCC Rcd 4481, 4490, n.20 (WCB 2022) (waiving the information request deadline requirement and directing USAC to allow the petitioner additional time to respond to the information request due to the COVID-19 pandemic); *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60, 17-310, Order, 36 FCC Rcd 7051, 7063, para. 31 & n.87 (WCB 2021) (directing USAC to grant a 28-day extension to the deadline to respond to information requests if sought by an applicant due to the COVID-19 pandemic and providing that applicants may file requests for waiver if funding requests are denied due to missed response deadlines for information requests (continued....))

Claiborne County Hospital and ENA Healthcare Services, LLC, MS, Request for Waiver, WC Docket No. 02-60, Funding Request No. 2087176 (filed June 14, 2021)²⁹

ENA Healthcare Services, LLC (Claiborne County Family Health Center, Inc.), MS, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 2085656, 2085818 (filed June 14, 2021)³⁰

Southwest Mississippi Mental Health Complex (a/k/a Warren-Yazoo Behavioral Health Center) and ENA Healthcare Services, LLC, MS, Request for Waiver and Review, WC Docket No. 02-60, Funding Request Nos. 2086440, 2086414, 2086422, 2086403, 2086454, 2086450 (filed June 7, 2021)³¹

Southwest Mississippi Mental Health Complex (a/k/a Warren-Yazoo Behavioral Health Center) and ENA Healthcare Services, LLC, MS, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 2086375, 2086411, 2086428, 2086442, 2086457 (filed Aug. 5, 2021)³²

Lee County Cooperative Clinic (d/b/a Hughes Satellite Clinic) and ENA Healthcare Services, LLC, AR, Request for Waiver, WC Docket No. 02-60, Funding Request No. 2086733 (filed June 14, 2021)³³

North Mississippi Primary Health Care, Inc. (a/k/a New Albany Health Care Associates) and ENA Healthcare Services, LLC, MS, Request for Review and Waiver, WC Docket No. 02-60, Funding Request No. 2086697 (filed July 16, 2021)³⁴

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issued prior to the release of the Order). We make no finding on the substantive issues in these waiver requests and remand the funding requests at issue to USAC for further review.

²⁹ ENA Healthcare Services subsequently provided supplemental information for this Request for Waiver. *See* Letter from Gina Spade, Counsel to ENA Healthcare Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 (dated Mar. 8, 2022) (ENA Healthcare Letter). We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information request.

³⁰ ENA Healthcare Services subsequently provided supplemental information for this Request for Waiver. *See* ENA Healthcare Letter. We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information requests.

³¹ ENA Healthcare Services subsequently provided supplemental information for this Request for Waiver. *See* ENA Healthcare Letter. We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information requests.

³² ENA Healthcare Services subsequently provided supplemental information for this Request for Waiver. *See* ENA Healthcare Letter. We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information requests.

³³ We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information request.

³⁴ In this appeal, the petitioner submitted a Request for Waiver on the deadline for responding to USAC's information request on a circuit location issue and a Request for Review on USAC's decision on a separate urban rate issue. We grant petitioner's Request for Waiver of the information request deadline regarding the circuit location issue. We direct USAC to consider the information submitted by the petitioner and allow the petitioner additional time to respond to the information request.

We dismiss without prejudice the petitioner's Request for Review on the urban rate issue to allow the petitioner to file its appeal with USAC first. *See* 47 CFR § 54.719(a). We waive the 60-day appeal filing deadline under 47 CFR § 54.720 and provide the petitioner 60 days from the release date of this Public Notice to file its appeal on the urban
(continued....)

*Waiver of the Invoice Filing Deadline*³⁵

Caring Hands Healthcare Network, OK, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220009272 (filed April 17, 2024)

Claiborne County Hospital, MS, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220013502 (filed Feb. 28, 2024)

Permian Telehealth Consortium, TX, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21974361, 21982271 (filed Feb. 25, 2023)

*Waiver of Service Provider Identification Number Change Deadline*³⁶

Brightspeed (BJC Health Care), MO, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220010400 (filed April 15, 2024)
Burnett Medical Center, WI, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21917301 (filed Jan. 6, 2022)

Lavaca Medical Center, TX; Paris Community Hospital, IL; East Tennessee Children's Hospital, TN; Morrill County Hospital, NE; Phs-Lackey Forest Sleep Clinic, MS, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220004535, RHC20220009005, RHC20220010080, RHC20220010081, RHC20220011968, RHC20220002640, RHC20220002783, RHC20220010862, RHC20220000053, RHC20220003684 (filed Mar. 12, 2024)

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rate issue at USAC. See e.g., *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, 38 FCC Rcd 1100 (WCB 2023) (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 to have it considered on the merits); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 20-34, 02-60, Public Notice, DA 24-85, 2024 WL 402163, at *1 & n.6 (WCB Feb. 1, 2024) (dismissing to allow appeal to be filed with USAC and waiving the 60-day appeal filing deadline); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 31 FCC Rcd 9615, 9621, n.17 (WCB 2016) (dismissing the request for review that properly belongs before USAC pursuant to Commission rules).

³⁵ See *Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (granting a waiver of the invoice filing deadline when the petitioner missed the deadline due to technical issues outside of its control) (*Indiana Telehealth Network Order*). We waive the petitioners' invoice filing deadlines and allow them 120 days from the release of this Public Notice to file invoices.

³⁶ See *Requests for Review of Decisions of the Universal Service Administrator by Bay Shore Union Free School District, et al., Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15537, 15543, para. 11 (WCB 2008) (waiving the service provider identification number (SPIN) change deadline when applicants were unaware of the need for a SPIN change until after the deadline). We direct USAC to coordinate with the applicants on filing SPIN change requests and make no finding as to the merits of the request. We also dismiss any requests for waivers of the invoice deadline as moot because, if a SPIN change is granted, USAC will set a new invoice deadline of 120 days from the date of the revised funding commitment letter approving the SPIN change. See 47 CFR § 54.627(a)(2).

High-Cost Program (Connect America Fund)**WC Docket Nos. 08-71, 10-90, 18-143****Granted***Performance Measures Pre-testing Requirements*³⁷

Liberty Communications of Puerto Rico, LLC Petition for Waiver, WC Docket Nos. 08-71, 10-90, 18-143 (filed Mar. 28, 2024)

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

- FCC -

³⁷ Liberty Communications began the process for sample location generation at least 56 days prior to the end of the first quarter of 2024 and was unable to download its subscriber locations for performance measures pre-testing due to technical issues with the Performance Measures Module, which have lasted through March 31, 2024. Therefore, Liberty was unable to perform testing by the end of the first quarter or certify testing results by April 8, 2024. See Wireline Competition Bureau Further Extends HUBB Certification Deadline for Deployed Fixed Locations for Alaska Plan Carriers, et, al., Public Notice, DA 22-846 (WCB 2022) (granting an extension of the HUBB filing deadline due to technical issues with HUBB system modifications).



Federal Communications Commission
Washington, D.C. 20554

April 18, 2024

DA 24-363

Hojun Kim
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Re: Requests for Waiver of 5.9 GHz Band Rules to Permit Initial Deployment of Cellular Vehicle-to-Everything Technology, ET Docket No. 19-138

Dear Petitioners:

We, the Public Safety and Homeland Security Bureau, the Office of Engineering and Technology, and the Wireless Telecommunications Bureau (collectively, the Bureaus) have before us eleven individual waiver requests submitted by (1) certain state, local, and municipal transportation authorities, including the Pennsylvania Department of Transportation (PADOT), the Louisiana Department of Transportation and Development (LADOTD), the Illinois State Toll Highway Authority (ISTHA), Prince George's County Maryland (PG County), the Contra Costa Transportation Authority, and the Maine Department of Transportation (MEDOT); (2) Battelle Memorial Institute (Battelle), a contractor for the Federal Railroad Administration¹; (3) equipment manufacturers Ettifos Co. (Ettifos), Continental Automotive Systems, Inc. (Continental), IT-Telecom Co., Ltd. (IT-T), and Nissan Technical Center North America (NTCNA), (also collectively, the "Waiver Applicants" or "Applicants").² For the reasons stated below, and subject to the technical parameters and conditions set forth herein, the Bureaus grant each of the Applicants' waiver requests to deploy Cellular Vehicle-to-Everything (C-V2X) technology within the 5.895–5.925 GHz band.

I. Background

Each Waiver Applicant³ seeks a waiver of certain Commission rules applicable to intelligent transportation systems (ITS) operations to allow C-V2X technology to be used in the upper 30 megahertz portion (5.895–5.925 GHz) of the 5.9 GHz (5.850–5.925 GHz) band prior to adoption of final C-V2X-based rules.⁴ The C-V2X equipment subject to the Waiver Requests would operate in the 5905–5925 MHz portion of the 5.9 GHz band using a 20-megahertz channel.

Waiver Requests. The Applicants seek a waiver of the Commission's rules to allow the 5.905–5.925 GHz band to be used for C-V2X safety systems operating in the Intelligent Transportation System

¹ Battelle is under contract with the Federal Railroad Administration (FRA) to develop a Rail Crossing Violation Warning Connected Vehicle application. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Battelle Memorial Institute, ET Docket No. 19-138 (filed Nov. 28, 2023) (hereafter, *Battelle Waiver Request*) at 2.

² See Appendix A: List of Waiver Petitions/Applicants, attached hereto.

³ Hereafter, individual waiver requests, as referenced in Appendix A, will be referred to as follows: (1) state, local, and municipal transportation authorities for Pennsylvania (*PADOT Waiver Request*), the Louisiana Department of Transportation and Development (*LADOTD Waiver Request*), the Illinois State Toll Highway Authority (*ISTHA Waiver Request*), Prince George's County Maryland (*PG County Waiver Request*), the Contra Costa Transportation Authority (*CCTA Waiver Request*), and the Maine Department of Transportation (*MEDOT Waiver Request*); (2) FRA contractor, Battelle Memorial Institute (*Battelle Waiver Request*); and (3) equipment manufacturers, Ettifos Co. (*Ettifos Waiver Request*), Continental Automotive Systems, Inc. (*Continental Waiver Request* or *Continental Waiver Supplement*), IT-Telecom Co., Ltd. (*IT-T Waiver Request*), and Nissan Technical Center North America (*NTCNA Waiver Request*).

⁴ See, e.g., *Ettifos Waiver Request* at 1; *PADOT Waiver Request* at 1; *Continental Waiver Request* at 1; *Continental Waiver Supplement* at 1; *Battelle Waiver Request* at 1; *ISTHA Waiver Request* at 1; *CCTA Waiver Request* at 1–2; *LADOTD Waiver Request* at 2; *PG County Waiver Request* at 2; *MEDOT Waiver Request* at 2; *IT-T Waiver Request* at 1–2; *NTCNA Waiver Request* at 1.

radio service.⁵ Specifically, each Applicant seeks a waiver of certain part 90 and part 95 rules⁶ (47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189)⁷ governing the operation of Dedicated Short-Range Communication (DSRC)-based roadside units (RSUs) and on-board units (OBUs) in the upper 30 megahertz of the 5.9 GHz band.

Each Waiver Applicant requests relief pursuant to section 1.925 of the Commission's rules.⁸ Specifically, PADOT, LADOTD, PG County, ISTHA, CCTA,⁹ MEDOT, and Battelle (hereafter, "the ITS licensees") seek certain rule waivers under section 1.925 to deploy C-V2X operations, including RSUs and OBUs, within and throughout their respective state, municipal, and/or local borders, or within the geographic areas authorized by their FCC ITS licenses each currently holds.¹⁰ Equipment manufacturers, Ettifos, Continental, IT-T, and NTCNA, seek certain rule waivers under section 1.925 to allow them to obtain the necessary equipment certifications for their C-V2X equipment.¹¹

Joint Waiver Order. On December 13, 2021, a group of public and private transportation stakeholders requested a waiver of the Commission's DSRC-based rules to allow them to use C-V2X

⁵ As part of their requests, Continental, CCTA, LADOTD, and PG County also seek a waiver of section 2.106(d)(160), which states that "[i]n the band 5895–5925 MHz, the use of the non-federal mobile service is limited to operations in the Intelligent Transportation Systems radio service." See 47 CFR § 2.106(d)(160); *Continental Waiver Request* at 1; *Continental Waiver Supplement* at 1; *CCTA Waiver Request* at 2; *LADOTD Waiver Request* at 2; *PG County Waiver Request* at 2. As the Bureaus previously noted in the Joint Waiver Order, section 2.106 merely limits operations in the upper 30 megahertz of the 5.9 GHz band to ITS services, so such a waiver is unnecessary. See Joint Waiver Order at 5. None of these Applicants contemplates deploying non-ITS operations in the upper 30 megahertz of the 5.9 GHz band. Therefore, their requests for a waiver of this provision are dismissed as moot.

⁶ See, e.g., *Ettifos Waiver Request* at 2, n.3; *PADOT Waiver Request* at 2, n.3; *Continental Waiver Request* at 2; *Continental Waiver Supplement* at 1; *Battelle Waiver Request* at 2, n.3; *ISTHA Waiver Request* at 1; *CCTA Waiver Request* at 2; *IT-T Waiver Request* at 1–2; *LADOTD Waiver Request* at 2; *PG County Waiver Request* at 2; *NTCNA Waiver Request* at 1–2; *MEDOT Waiver Request* at 2, n.3.

⁷ See 47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, 95.3189. CCTA, LADOTD, and PG County also seek a waiver of 47 CFR § 95.3159. See *CCTA Waiver Request* at 2; *LADOTD Waiver Request* at 2; *PG County Waiver Request* at 2. However, 95.3159 is a reserved section and does not presently contain any regulatory information. Thus, we dismiss this aspect of each of these waiver requests as moot.

⁸ 47 CFR § 1.925.

⁹ CCTA requests waiver relief on behalf of itself and nineteen other municipalities. *CCTA Waiver Request* at 2 & App. A (List of Contra Costa County Incorporated Municipalities). Only one of these municipalities currently possesses an active ITS license, Walnut Creek (WQWW597), and none are signatories to CCTA's waiver request. Accordingly, CCTA's request to extend its waiver to these entities is denied. These entities must first apply for ITS authorizations to which a waiver would apply and, thereafter, on their own behalf, request a waiver of the relevant ITS rules if they wish to operate ITS systems using C-V2X-based technology. Similarly, LADOTD requests a waiver "for itself and all eligible municipalities within the geographic borders of the State of Louisiana." *LADOTD Waiver Request* at 1–2. LADOTD's request to extend waiver relief to certain unnamed "municipalities within its geographic borders" is likewise denied.

¹⁰ See, e.g., *PADOT Waiver Request* at 2–3 (WRBM305); *LADOTD Waiver Request* at 2 (WQCR805); *PG County Waiver Request* at 2 (WRFK217); *Battelle Waiver Request* at 2–3 (WQZC71); *ISTHA Waiver Request* at 1 (WQZJ502); *CCTA Waiver Request* at 2 (WQZS543); *MEDOT Waiver Request* at 2 (WQBJ438).

¹¹ See *Ettifos Waiver Request* at 3; *Continental Waiver Request* at 2–3; *Continental Waiver Supplement* at 1; *IT-T Waiver Request* at 2; *NTCNA Waiver Request* at 2.

technology in the upper 30 megahertz of the 5.9 GHz band prior to adoption of final C-V2X-based rules.¹² The *Joint Waiver Request* stated that the C-V2X equipment subject to the request would operate in the 5905–5925 MHz portion of the 5.9 GHz band using a 20 megahertz channel.¹³ On April 24, 2023, the Bureaus granted the *Joint Waiver Request*.¹⁴ The Bureaus conditioned the waiver grant on certain technical and operational parameters set forth in the Joint Waiver Order¹⁵ and further modified those conditions by our Waiver Modification Order on July 5, 2023.¹⁶ Each of the instant Waiver Applicants requests that the Bureaus grant them waivers under the same grant conditions specified in the C-V2X Joint Waiver Order, as modified by the July 5, 2023 Waiver Modification Order (C-V2X Joint Waiver Order, as modified).¹⁷

For the reasons stated below, the Bureaus collectively grant each Applicant’s waiver request to deploy C-V2X technology in the upper 30 megahertz of the 5.9 GHz band, pending adoption of final C-V2X-based rules, subject to the technical parameters and conditions set forth below, which are consistent with the technical parameters and conditions set forth in the C-V2X Joint Waiver Order, as modified.¹⁸

II. DISCUSSION

A. Waiver Standard

The Applicants seek waivers pursuant to section 1.925 of the Commission’s rules. Section 1.925 states that the agency may grant a waiver if it is shown that the underlying purpose of the rule at issue would not be served or would be frustrated by application to the instant case, and a grant would be in the public interest, or where, “[i]n view of unique or unusual factual circumstances,” application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no

¹² See Request for Waiver of 5.9 GHz Band Rules to Permit Initial Deployments of Cellular Vehicle-to-Everything Technology, Ford Motor Company, et al., ET Docket No. 19-138, Appendix 1 at 10–11 (filed Dec. 13, 2021) (*Joint Waiver Request*), https://www.fcc.gov/ecfs/file/download/DOC-5f6d7d2ef3400000-A.pdf?file_name=C-V2X%20Waiver%20Request%2012%2013%202021.pdf; see also Letter from the C-V2X Joint Waiver Parties to Marlene H. Dortch, Secretary, FCC, ET Docket No. 19-138, at 3 (filed Apr. 20, 2022) (*Joint Waiver Request Supplement*), <https://www.fcc.gov/ecfs/document/104201266008794/1>.

¹³ *Joint Waiver Request* Appendix 1 at 10–11; *Joint Waiver Request Supplement* at 3.

¹⁴ See Request for Waiver of 5.9 GHz Band to Permit Initial Deployment of Cellular Vehicle-to-Everything Technology, Order, ET Docket No. 19-138, DA 23-343 (rel. Apr. 24, 2023) (Joint Waiver Order). The Bureaus waived sections 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189 of the Commission’s rules, 47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, 95.3189. See Joint Waiver Order at 10–11.

¹⁵ Joint Waiver Order at 10–11.

¹⁶ See Request to Modify April 24, 2023 Waiver Order of 5.9 GHz Band Rules to Permit Initial Deployment of Cellular Vehicle-to-Everything Technology, Order, ET Docket No. 19-138, DA 23-586 (rel. Jul. 5, 2023) (Waiver Modification Order) (removing the 20 dBm transmitter output power limit for OBUs from the technical requirements placed on the waiver grant).

¹⁷ See *Ettifos Waiver Request* at 1–2; *PADOT Waiver Request* at 1–2; *Continental Waiver Supplement* at 1; *Battelle Waiver Request* at 1–2; *ISTHA Waiver Request* at 1; *IT-T Waiver Request* at 1–2; *NTCNA Waiver Request* at 1–2; *CCTA Waiver Request* at 2–4; *LADOTD Waiver Request* at 2; *PG County Waiver Request* at 2; *MEDOT Waiver Request* at 1–2. CCTA, LADOTD, and PG County base their waiver requests on the grant order issued by the Bureaus on August 16, 2023, which follows the grant conditions set forth in the April 24, 2023 Joint Waiver Order, as modified by the July 5, 2023 Waiver Modification Order.

¹⁸ See Waiver Modification Order at 4.

reasonable alternative.¹⁹ In addition, section 1.3 provides that the Commission may waive any provision of its rules on its own motion for good cause.²⁰

Specifically, each of the Waiver Applicants seeks a waiver of certain Commission rules applicable to ITS operations in the 5.9 GHz band (*i.e.*, 47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189), the rule sections that establish the technical requirements mandating DSRC-based technology in the upper 30 megahertz of the 5.9 GHz band, to allow the use of C-V2X-based technology in the band and to provide adjustments to the technical parameters where the two technologies differ. As discussed briefly below, and in greater detail in the Joint Waiver Order,²¹ we find that a waiver of these rules is warranted under section 1.925, subject to the Waiver Applicants' commitments to adhere to the technical parameters and conditions imposed by the Joint Waiver Order, as modified by the Waiver Modification Order, which are intended to protect DSRC and federal incumbents from potentially harmful interference caused by C-V2X operations in the upper 30 megahertz of the 5.9 GHz band.

We find that, pursuant to section 1.925(b)(3)(i) of the Commission's rules, the underlying purpose of the rules governing ITS operations would not be served by denying these requests and thereby delaying or precluding C-V2X operations in the upper 30 megahertz of the 5.9 GHz band.²² Furthermore, we find that a waiver in this case will facilitate early C-V2X deployment as the Commission envisioned in the *5.9 GHz First R&O*.²³ Granting the Waiver Applicants' requests serves the public interest by encouraging widespread deployment of ITS operations using C-V2X technology. As with the initial requests, "[t]o deny [these requests] and insist on application of the current DSRC-based rules would be contrary to the public interest as it would further entrench the DSRC technology the Commission determined needs to be replaced and preclude rapid deployment of the technology the Commission has identified as best suited to promote the most efficient and effective use of the spectrum."²⁴ We further find that permitting C-V2X technologies to deploy now, prior to adoption of final C-V2X rules, will serve the public interest by advancing vehicular safety and promoting interoperability.²⁵

Based on the record before us, we grant a waiver, to the extent necessary, to each of the Waiver Applicants listed in Appendix A for the C-V2X deployments specified below, with conditions to protect incumbent licensees and interests. As to the named Waiver Applicants, we waive the Part 90 and 95 rule requirements that mandate DSRC technology in favor of C-V2X operation pursuant to the conditions

¹⁹ 47 CFR § 1.925(b)(3)(i)–(ii).

²⁰ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *see also* *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²¹ *See* Joint Waiver Order, paras. 7–14.

²² 47 CFR § 1.925(b)(3)(i).

²³ *Use of the 5.850–5.925 GHz Band*, ET Docket No. 19-138, First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification, 35 FCC Rcd 13440 (2020) (*5.9 GHz First R&O*), *petitions for review denied sub nom. Intelligent Transp. Soc'y of America v. FCC*, 45 F.4th 406 (D.C. Cir. 2022).

²⁴ Joint Waiver Order at 5.

²⁵ *See id.*; *see also 5.9 GHz First R&O* at 13480, para. 99.

articulated in Section II.B. below.²⁶

ITS licensees (PADOT, LADOTD, PG County, ISTHA, CCTA, MEDOT and Battelle). Specifically, we grant to the ITS licensees waiver of 47 CFR §§ 90.375 (governing RSU license areas, communication zones, and registrations) and 90.377 (RSU frequencies available, maximum power limit, antenna height, and priority communications).²⁷

ITS licensees and equipment manufacturers. We grant to the ITS licensees and the equipment manufacturers (Ettifos, Continental, IT-T, and NTCNA) waiver of 47 CFR §§ 90.379 (governing technical standards for RSUs).

Equipment manufacturers. We grant to the equipment manufacturers (Ettifos, Continental, IT-T, and NTCNA) waiver of 47 CFR §§ 95.3163 (providing that DSRC OBUs are permitted to operate in the upper 30 megahertz of the 5.9 GHz band), 95.3167 (maximum power limit for DSRC OBUs), and 95.3189 (technical standard for DSRC OBUs).

B. Waiver Grant Conditions.

Consistent with the technical requirements and restrictions imposed by the Joint Waiver Order,²⁸ as modified by the Waiver Modification Order,²⁹ this waiver grant is subject to the technical parameters and conditions set forth below.

Scope of the Waiver. With respect to the ITS licensees, this waiver is limited to PADOT, LADOTD, PG County, ISTHA, CCTA, MEDOT, and Battelle to allow them to deploy C-V2X infrastructure that satisfies all conditions of this Order, including RSUs and OBUs, within their respective jurisdictions and/or license areas. The geographic area of the waiver is limited to the area encompassing PADOT's, LADOTD's, PG County's, CCTA's, and MEDOT's respective legal jurisdictions, or for ISTHA and Battelle, the geographic parameters defined by their licenses.

All operations authorized pursuant to this waiver are limited to transportation and vehicle safety-related communications.

All C-V2X operations permitted pursuant to this waiver are limited to the 5905–5925 MHz frequencies using a 20-megahertz channel.

With respect to equipment manufacturers, this waiver is limited to Ettifos, Continental, IT-T, and NTCNA and provides them eligibility to obtain the necessary equipment certifications for their RSUs and OBUs. Equipment authorization requirements continue to apply to all RSUs and OBUs under this waiver

²⁶ We note that each of the Waiver Applicants either expressly requested a waiver of the Part 90 and Part 95 rules governing ITS operations in the 5.9 GHz band or referenced the rule waivers issued to the C-V2X Joint Waiver Parties in the Joint Waiver Order. Accordingly, for the Waiver Applicants that requested a waiver of the ITS rules generally, or that referenced the rules waived in the Joint Waiver Order, we recognize, pursuant to our own authority under section 1.3 of the Commission's Rules, that these Waiver Applicants have requested a waiver of the same rule sections identified in the Joint Waiver Order, as amended, and grant each such Waiver Applicant a waiver, to the extent necessary, of the rules waived by the Joint Waiver Order, as amended. *See* 47 CFR § 1.3.

²⁷ 47 CFR §§ 90.375, 90.377.

²⁸ *See* Joint Waiver Order, paras. 17–26.

²⁹ *See* Waiver Modification Order at 4.

order.³⁰ Any application for equipment authorization will need to include a copy of this waiver order.³¹

C-V2X operations under this waiver order are authorized on a secondary basis to the federal radiolocation service operating on a primary basis within the 5895–5925 MHz band and must protect these federal operations from harmful interference. The NTIA reviewed the technical parameters adopted in the Joint Waiver Order,³² as modified by the Waiver Modification Order,³³ and agrees that spectrum usage should be limited to 5905–5925 MHz and that EIRP for both OBUs and RSUs be limited to 33 dBm.³⁴ In addition, “to adequately protect the primary 5.9 GHz band for federal radiolocation services during this waiver period,” NTIA also requests that C-V2X OBUs be limited to an EIRP of 27 dBm at ± 5 degrees in elevation from the horizontal plane.³⁵ Pursuant to their requests to abide by the same grant conditions outlined in the Joint Waiver Order, as modified, each of the Waiver Applicants has agreed to these conditions.³⁶

Technical Requirements and Restrictions. All RSUs and OBUs authorized under this Order must operate using the technical characteristics and operating parameters, including power, height, and out-of-band emission limits, specified below, to ensure compliance with all existing technical rules applicable to ITS operations other than the requirement to use DSRC-based technology:

C-V2X OBU and RSU Operations

Frequency Range	Channel Bandwidth	OBU Limits	RSU EIRP Limit
5905–5925 MHz	20 megahertz	33 dBm EIRP*; 27dBm EIRP within 5 degrees of horizontal	33 dBm EIRP

*EIRP (equivalent isotropically radiated power)

C-V2X Out-of-Band Emissions (OOBE) Limits

Frequency Offset (MHz from Channel Edge)	OOBE EIRP Limits for C-V2X Transmissions (dBm/100 kHz)**
0.0	-16.0
1.0	-22.0
10.0	-30.0
20.0	-40.0

**See IEEE 802.11p-2010 Table I.8

³⁰ See generally 47 CFR §§ 2.901 *et seq.* (subpart J – Equipment Authorization Procedures); 47 CFR § 2.905 (Marketing of radio frequency devices prior to equipment authorization).

³¹ The OET Laboratory has provided detailed filing guidance in its knowledge database (KDB). See [511808 D01 C-V2X Waiver v01](#).

³² See Joint Waiver Order, paras. 17–26.

³³ See Waiver Modification Order at 4.

³⁴ See Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Ronald T. Repasi, Acting Chief, FCC Office of Engineering and Technology, ET Docket No. 19-138, at 3 (filed April 14, 2023).

³⁵ *Id.*

³⁶ See *supra* note 17.

The ITS licensees' C-V2X RSU operations must protect DSRC and primary non-federal fixed-satellite service (Earth-to-space) operations in the 5.895–5.925 GHz band from harmful interference. Prior to commencing C-V2X operations, the ITS licensees must successfully coordinate with all DSRC incumbent(s) whose licensed areas either overlap or are within 25 miles of their license areas. The purpose of this coordination is to ensure that harmful interference will not occur.³⁷ In addition, within 30 days of commencing operations, the ITS licensees must file a report in the Universal Licensing System (ULS) confirming successful coordination (including the names of the DSRC incumbents and dates coordination was completed) or, if applicable, certifying that coordination was unnecessary and must include a grandfathered list of RSU locations that will be converted from DSRC to C-V2X operation. FCC staff will add a C-V2X special condition to these RSU locations and forward the grandfathered RSU list to NTIA.

RSU registration requirements. ITS licensees must register each RSU in ULS before operating the RSU. RSUs included in the grandfathered DSRC RSU list being converted to C-V2X do not need to be filed in ULS. RSU registrations are subject to the requirements of 47 CFR § 1.923 as applicable (antenna structure registration, environmental review, international coordination, and quiet zones). Additionally, RSUs at locations subject to NTIA coordination may not begin operation until the licensee receives NTIA approval.³⁸ Registrations are not effective until the Commission posts them in ULS. It is the licensee's responsibility to delete from the registration database any RSUs that have been discontinued.³⁹

Compliance with Final Rules. We intend by this Order to enable a fast transition to the next generation of technology in this spectrum band while the Commission contemplates the framework for final rules. Consistent with this goal, we condition the waiver on the requirement that each waiver recipient will ensure that RSU and OBU operations and devices authorized under the waiver will comply with the final rules or other guidance provided by the Commission in any timeframe determined by the Commission. This approach ensures that waiver recipients, including but not limited to equipment manufacturers, will consider the pendency of the final rulemaking, and incorporate technology that will allow prompt and efficient regulatory compliance with respect to individual RSUs, OBUs, and C-V2X-based operations once any relevant final rules are implemented. Equipment manufacturers, in particular, must take steps to ensure that they can update or disable any OBUs deployed pursuant to this Order to bring these units into compliance with the final rules. Recipients of this waiver should be aware that the Commission may further tailor this and other waiver conditions, if needed and as appropriate, as part of any determination it makes in the rulemaking proceeding.

II. ORDERING CLAUSES

Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, each of the requests by the parties listed in Appendix A, attached hereto, to waive the requirements of sections 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189 of the Commission's rules, 47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, 95.3189, are HEREBY GRANTED subject to the conditions outlined above, and ARE OTHERWISE DENIED.

IT IS FURTHER ORDERED that each of the requests to waive the requirements of 47 CFR §

³⁷ Setting the coordination distance at 25 miles will ensure that C-V2X RSU operators are able to identify any neighboring DSRC incumbents.

³⁸ See 47 CFR § 90.371(b).

³⁹ See 47 CFR § 90.375(b).

2.106(d)(160) and 47 CFR § 95.3159 are HEREBY DISMISSED as moot.

These actions are taken under delegated authority pursuant to sections 0.31, 0.131, 0.191, 0.241, 0.331, 0.392, and 1.3 of the Commission's rules, 47 CFR §§ 0.31, 0.131, 0.191, 0.241, 0.331, 0.392, 1.3, and the *5.9 GHz First R&O*.⁴⁰

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief, Public Safety and Homeland Security Bureau

Ronald Repasi
Chief, Office of Engineering and Technology

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

⁴⁰ *5.9 GHz First R&O* at 13424–65, paras. 55–56.

**APPENDIX A
WAIVER PETITIONS/APPLICANTS**

1. Ettifos Co. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Ettifos Co., ET Docket No. 19-138 (filed Dec. 27, 20223) (*Ettifos Waiver Request*), <https://www.fcc.gov/ecfs/document/12270443126582/1>.
2. Pennsylvania Department of Transportation. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Pennsylvania Department of Transportation, ET Docket No. 19-138 (filed Dec. 22, 20223) (*PADOT Waiver Request*), <https://www.fcc.gov/ecfs/document/122212361623/1>.
3. Battelle Memorial Institute. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Battelle Memorial Institute, ET Docket No. 19-138 (filed Nov. 28, 2023) (*Battelle Waiver Request*), <https://www.fcc.gov/ecfs/document/112832256890/1>.
4. Continental Automotive Systems, Inc. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Continental Automotive Systems, Inc., ET Docket No. 19-138 (filed Jan. 23, 2023) (*Continental Waiver Request*), <https://www.fcc.gov/ecfs/document/1012352190998/1>; see also Letter from Kirby Howard, Government Affairs, Continental Automotive Systems, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 19-138 (filed Nov. 3, 2023) (*Continental Waiver Supplement*), <https://www.fcc.gov/ecfs/document/11031027100550/1>.
5. The Illinois State Toll Highway Authority. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, the Illinois State Toll Highway Authority, ET Docket No. 19-138 (filed Oct. 25, 2023) (*ISTHA Waiver Request*), <https://www.fcc.gov/ecfs/document/102590086305/1>.
6. The Contra Costa Transportation Authority. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, the Contra Costa Transportation Authority, ET Docket No. 19-138, ULS File No. 0010806429 (filed Dec. 6, 2023) (*CCTA Waiver Request*), <https://wireless2.fcc.gov/ULSEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1683598620&attachmentKey=21891128&attachmentInd=applAttach>.
7. State of Louisiana Department of Transportation and Development WQCR805. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, the State of Louisiana Department of Transportation and Development, ET Docket No. 19-138, ULS File No. 0010940003 (filed Feb. 26, 2024) (*LADOTD Waiver Request*), <https://wireless2.fcc.gov/ULSEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=iTbr3WoO4mRjJIQ3q7LlavumWKcLnjluQAXD7ibxpBAK1NojldM3!1143847039!-1782758212?applType=search&fileKey=236423925&attachmentKey=21929989&attachmentInd=applAttach>.
8. Prince George's County Maryland WRFK217. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Prince George's County Maryland, ET Docket No. 19-138 In the Intelligent Transportation Systems Radio Service, ULS File No. 0010936942 (filed Feb. 23, 2024) (*PG County Waiver Request*), <https://wireless2.fcc.gov/ULSEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=405721612&attachmentKey=21929320&attachmentInd=applAttach>.

9. IT-Telecom Co., Ltd. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, IT-Telecom Co., Ltd., ET Docket No. 19-138 (filed Feb. 26, 2024) (*IT-T Waiver Request*), <https://www.fcc.gov/ecfs/document/10226364603192/1>.

10. Nissan Technical Center North America. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Nissan Technical Center North America, ET Docket No. 19-138 (filed Feb. 15, 2024) (*NTCNA Waiver Request*), <https://www.fcc.gov/ecfs/document/1021563935338/1>.

11. The State of Maine Department of Transportation. See Request for Waiver of 5.9 GHz Band Rules to Permit Deployments of Cellular Vehicle-to-Everything Technology, Maine Department of Transportation, ET Docket No. 19-138 (filed Feb. 8, 2024) (*MEDOT Waiver Request*), <https://www.fcc.gov/ecfs/document/1020803421843/1>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-364

Released: April 18, 2024

WIRELINE COMPETITION BUREAU SEEKS INFORMATION FOR THE ANNUAL INFORMATION COLLECTION ON 988 FUNDS MANDATED BY THE NATIONAL SUICIDE HOTLINE DESIGNATION ACT OF 2020

WC Docket No. 18-336

The Wireline Competition Bureau invites states, political subdivisions, Indian Tribes, or villages or regional corporations to submit information on their jurisdiction's authority to collect 988 fees or charges, the amount of revenue collected from the 988 fee or charge, and how the revenue collected from the 988 fee or charge was used, covering the period of January 1, 2023 through December 31, 2023. This information will be used by the Commission in its report to Congress on 988 funds as mandated by the National Suicide Hotline Designation Act of 2020 (988 Act).¹ The requested 988 fee information must be provided through a fillable questionnaire, available for download at <https://www.fcc.gov/988-fee-reports-and-reporting>, and be submitted to 988feereport@fcc.gov no later than July 17, 2024. In the coming weeks, states and other jurisdictions can expect to receive more detailed information on the questionnaire and how to submit it to the Commission.

On October 17, 2020, the President signed the 988 Act into law. The 988 Act designates 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 [988 Suicide & Crisis Lifeline]."² It also requires the Commission to submit annually a 988 fee accountability report to Congress.³ By this public notice, we seek information regarding the collection and use of 988 funds to inform the third annual 988 fee accountability report, which is due to Congress by October 17, 2024.⁴

Section 4 of the 988 Act requires the Commission to submit an annual report to Congress that details how each state, political subdivision, Indian Tribe, or village or regional corporation collects and expends 988 fees or charges.⁵ It also requires the Commission to determine the amount of 988 fees or charges that have been diverted or transferred for uses other than those approved in the 988 Act.⁶ Under the 988 Act, a 988 fee or charge may only be imposed, collected, and used for 988 related services, which

¹ National Suicide Hotline Designation Act of 2020, § 3(a), Pub. L. No. 116-172, <https://www.congress.gov/116/plaws/publ172/PLAW-116publ172.pdf> (988 Act).

² 988 Act, § 3(a).

³ 988 Act, § 4(b). Congress also directed the Commission to submit a report on location identification. 988 Act § 5. The location identification report was submitted to Congress on April 15, 2021. FCC, 988 Geolocation Report – National Suicide Hotline Designation Act of 2020 (2021), <https://docs.fcc.gov/public/attachments/DOC-371709A1.pdf> (988 Geolocation Report).

⁴ 988 Act, § 4(b).

⁵ 988 Act, § 4(b)(1), (b)(2).

⁶ 988 Act, § 4(b)(2).

include: (1) the “efficient and effective routing of calls” to 988 to an appropriate crisis center and (2) “personnel and the provision of acute mental health, crisis outreach and stabilization services” for the 988 Lifeline.⁷

For further information, please contact Jaime McCoy at 988feereport@fcc.gov.

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⁷ 988 Act, § 4(a)(2)(A), (a)(2)(B).



PUBLIC NOTICE

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

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DA 24-365
April 18, 2024

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 15 (IOWA) 700 MHz AND 800 MHz REGIONAL PLANNING COMMITTEES
TO HOLD MEETINGS**

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

The Region 15 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive virtual meetings on Thursday, May 9, 2024. Beginning at 1:30 PM (CDT), the Region 15 700 MHz RPC will convene via Microsoft Teams. The Region 15 800 MHz RPC meeting will convene immediately following the conclusion of the 700 MHz RPC meeting.

Join meeting from your computer, tablet or smartphone at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2IzNTEyMDctM2JiZC00Yzc1LTlkMWQtdNWlYMTAwYWVvMDA1%40thread.v2/0?context=%7b%22Tid%22%3a%220888b8b3-3118-4db6-902b-27d903f073cc%22%2c%22Oid%22%3a%229f24b0a7-b0cd-4c91-ba48-d54fc96d1b56%22%7d

- Meeting ID: 224 987 118 407
- Passcode: 2pbgab
- Meeting also available by phone: +1 515-207-8241
- Phone conference ID: 145 310 092#

The agenda for the 700 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: October 12, 2023.
- Public Comment & Correspondence
- Chairperson's Report
- Old Business
- Review of Applications
- New Business
- Next meeting
- Adjourn

The agenda for the 800 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: October 12, 2023
- Public Comment & Correspondence
- Chairperson's Report
- Old Business

- Discussion and possible action to authorize updating and amending the plan.
- Review of Applications
- New Business
- Next meeting
- Adjourn

The Region 15 RPC meetings are open to the public. All public safety providers in Region 15 may utilize these 700 MHz and 800 MHz frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 15 should plan to attend. For further information, please contact:

Rob Dehnert
 Chair, 700 MHz and 800 MHz RPCs
 City of West Des Moines, Iowa
 Westcom Emergency Medical and Communications Services
 Phone: 515-273-0762
 Email: rob.dehnert@wdm.iowa.gov

Jason Hoffman
 Vice Chair
jhoffman@carrollcountyiowa.org

Nick Brockman
 Secretary
nick.brockman@polkcountyiowa.gov

- FCC -

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

In the Matter of	)	
	)	
Requests for Waiver by	)	
	)	
Bartlett Regional Hospital	)	
	)	
Community Counseling Services	)	
	)	
Heart of Texas Region MHMR	)	
	)	
Hiawatha Behavioral Health	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60

ORDER

Adopted: April 18, 2024

Released: April 18, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address four requests from petitioners seeking waivers of the deadline to submit requests for funding under the Rural Healthcare (RHC) Program.¹ Consistent with precedent established in the E-Rate Program, we grant two requests where the petitioners did file, and deny two requests where the petitioners did not file, funding requests or waiver requests within 14 days after the filing window deadline.²

¹ See Request for Waiver of Bartlett Regional Hospital, CC Docket No. 02-60 (filed June 11, 2021), <https://www.fcc.gov/ecfs/search/search-filings/filing/10612166968696> (Bartlett Request for Waiver); Request for Waiver of Hiawatha Behavioral Health, CC Docket No. 02-60 (filed June 11, 2021), <https://www.fcc.gov/ecfs/search/search-filings/filing/10611297752797> (Hiawatha Request for Waiver); Request for Waiver of Heart of Texas Region MHMR, CC Docket No. 02-60 (filed Aug. 23, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/1082390781140> (Heart of Texas Request for Waiver); Request for Waiver of Community Counseling Services, CC Docket No. 02-60 (filed Dec. 27, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/1227129927548> (Community Counseling Services Request for Waiver). Each year, USAC is responsible for opening an initial application filing window with an end date no later than 90 days prior to the start of the funding year. See 47 CFR § 54.621(a). Pursuant to section 54.719(c) of the Commission's rules, a party seeking waiver shall seek relief directly from the Commission. 47 CFR § 54.719(c). While not all petitioners addressed in this Order have specifically requested waiver of the filing window deadline, each petitioner's request is treated as such because each petitioner requests that a funding request filed outside of the filing deadline window be reviewed by USAC.

² See *Request for Review of the Decision 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 (2010) (*Academy of Math and Science*).

II. BACKGROUND

2. The Commission's RHC Program consists of two component mechanisms: (1) the Healthcare Connect Fund (HCF) Program and (2) the Telecommunications (Telecom) Program. The HCF Program promotes the use of broadband services and facilitates the formation of health care provider consortia that include both rural and urban health care providers by providing a flat 65% discount on an array of advanced telecommunications and information services.³ The Telecom Program subsidizes the difference between the rates in the health care provider's rural area and rates for comparable services available in urban areas within the health care provider's state.⁴

3. In order to obtain RHC Program support, eligible healthcare providers (HCPs) must file funding requests (using the FCC Form 462 for the HCF Program and FCC Form 466 for the Telecom Program) to the Universal Service Administrative Company (USAC) during an application filing window established for each funding year.⁵ Effective funding year 2021, the Commission revised section 54.621 of its rules to require that USAC establish an initial application filing window with an end date no later than 90 days prior to the start of the funding year.⁶ In doing so, the Commission analogized the RHC Program to the E-Rate Program, which has its own application funding window that closes 90 days in advance of the funding year intended to provide applicants with certainty as to when funding requests must be filed.

4. Two of the petitions before us request waiver of the funding year 2021 application filing deadline.⁷ Bartlett Regional Hospital (Bartlett) seeks waiver of the filing deadline for one of its applications, which Bartlett attempted to submit one day past the June 1, 2021 filing deadline, and promptly sought waiver that same day.⁸ Bartlett cites to the demands of responding to the COVID-19 pandemic and a vacancy in its sole Grant Manager position as the reasons for its late-filed funding request.⁹ Hiawatha Behavioral Health (Hiawatha) likewise requests waiver of the filing deadline for three of its funding requests, which Hiawatha submitted ten days after the June 1 deadline.¹⁰ Hiawatha provides no explanation for its late filing, only submitting its three funding requests directly to the Commission through the Electronic Comment Filing System.¹¹

³ See 47 U.S.C. § 254(h)(2)(A); 47 CFR §§ 54.611, 54.612; *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16680-81, paras. 1-3 (2012).

⁴ See 47 U.S.C. § 254(h)(1)(A); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-161, paras. 608-749 (1997).

⁵ See Universal Service Administrative Co., *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/> (last visited Apr. 8, 2024) (HCF Program); Universal Service Administrative Co., *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> (last visited Apr. 8, 2024) (Telecom Program).

⁶ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, 34 FCC Rcd 7335, 7416 (2019); see also 47 CFR § 54.621(a). The funding year is the period between July 1 of the current year through June 30 of the next calendar year. 47 CFR § 54.600(a).

⁷ For funding year 2021, the application filing window close was extended from April 1, 2021, until June 1, 2021 because of the impact of the COVID-19 pandemic. See *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604, 1604, para. 1 (WCB 2021).

⁸ Bartlett Request for Waiver.

⁹ *Id.*

¹⁰ Hiawatha Request for Waiver.

¹¹ *Id.*

5. The two remaining petitions request waiver of the application filing deadline for funding year 2022.¹² Heart of Texas Region MHMR (Heart of Texas) seeks waiver of the RHC Program filing deadline, submitting its waiver request 83 days after the close of the application window.¹³ Heart of Texas offers no explanation for missing the filing deadline other than that its application “was not submitted and still shows in draft mode.”¹⁴ Community Counseling Services (CCS) seeks waiver of the RHC Program funding window deadline for three of its funding requests, for which the waiver request was filed 209 days after the close of the application window.¹⁵ CCS cites to a “mistake due to a misinterpretation of funding year end dates and what was funded and not funded for [funding year] 2023” as the reason for missing the funding request deadline.¹⁶

III. DISCUSSION

6. The Commission may waive its rules for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts would make strict compliance inconsistent with the public interest.¹⁸ Additionally, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ 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.²⁰

7. In this Order, we grant the requests of Bartlett and Hiawatha and deny the requests of Heart of Texas and CCS seeking waiver of the filing window deadlines set forth in section 54.621(a) of the Commission’s rules. In acting on these waiver requests, we are guided by a Commission decision addressing multiple requests for waiver of the E-Rate Program’s application filing deadline.²¹ In

¹² For funding year 2022, the application filing window close was extended from April 1, 2022, until June 1, 2022 because of the impact of the COVID-19 pandemic. See *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17- 310, Order, 37 FCC Rcd 2834, 2834, para. 1 (WCB 2022).

¹³ Heart of Texas Request for Waiver at 1.

¹⁴ *Id.*

¹⁵ Community Counseling Services Request for Waiver.

¹⁶ *Id.* at 1.

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

²¹ See *Academy of Math and Science*, 25 FCC Rcd at 9256-62. *Academy of Math and Science* is part of a series of E-Rate Program orders addressing requests for waivers of the E-Rate Program filing window deadline. In 2006, the Commission granted filing window deadline waiver requests where petitioners demonstrated special circumstances to justify waiver, including cases where (1) petitioners “committed minor errors in filling out their application forms,” (2) “someone on the applicants’ staff made a mistake or had a family emergency that prevented them from filing on time,” or (3) “the delay in the filing or receipt of the application was due to circumstances out of the applicants’ control” such as inclement weather or school reorganizations. *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5321-23 (2006) (*Bishop Perry*). Next, consistent with *Bishop Perry*, the Wireline Competition Bureau (Bureau) granted waivers where “someone on the applicants’ staff failed to file on time due to misunderstanding or personal emergencies” or where “the delay in the filing or the receipt by USAC of the FCC Form 471 was due to circumstances out of the applicants’ control.” *Request for Review of the Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4748-49 (WCB 2007) (*Academy for Academic Excellence*). Subsequently, consistent with *Bishop Perry* and *Academy for Academic Excellence*, the Bureau granted waivers for petitioners on the basis of special circumstances

(continued....)

Academy of Math and Science, the Commission granted 57 waiver requests from petitioners that were filed within 14 days after the filing deadline, finding that the petitioners' applications "were filed close enough to the deadline so as not to impair the administration of the [E-Rate] program."²² The Commission, using the same rationale, also granted three waiver requests from petitioners whose funding requests were delayed by "unexpected" circumstances (e.g., "the unexpected serious illness or death of a family member for the staff member assigned responsibility for E-Rate applications") that were filed within 30 days of the filing deadline.²³ The Commission, however, denied 158 waiver requests wherein the petitioner filed more than 14 days after the filing deadline and failed to present such special circumstances justifying a waiver of the filing deadline.²⁴ We now apply these E-Rate Program waiver standards announced in *Academy of Math and Science* to the RHC Program in the continuing effort to improve the administration of the RHC Program and, when sensible, establish consistency between the two programs.²⁵

8. *Grants.* We grant Bartlett's and Hiawatha's waiver requests, which were filed by petitioners within 14 days of the end of the filing window.²⁶ Consistent with the *Academy of Math and Science* decision, we find that, because the petitioners' requests involve procedural and not substantive violations of the Commission's rules, petitioners' requests should not be rejected outright.²⁷ While filing and other procedural deadlines are necessary to maintain the efficient administration of the application process, requiring strict compliance with the Commission's rules in this instance, where a late funding application was filed within 14 days of the deadline and administration of the RHC Program was minimally affected, frustrates the basic purpose of the RHC Program and would not serve the public interest.²⁸ Bartlett filed its waiver request just one day after the application filing deadline and Hiawatha

(Continued from previous page)

where petitioners filed within 14 days after the filing window deadline, filed "late because of an illness of the E-rate staff person or from the death of a member or his or her family," and filed more than 14 days late "when circumstances beyond the applicant's control cause the applicant to miss a deadline on a matter that is procedural" (e.g., a technical problem with USAC's online filing or the USAC system not processing a request). *In re Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474, at 15478-79 (WCB 2008) (*Acorn Public Library District*).

²² *Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²³ *See id.* (finding too that "these applications were filed close enough to the deadline so as not to impair the administration of the program.").

²⁴ *See id.* at 9261-62.

²⁵ *See Promoting Telehealth in Rural America*, 34 FCC Rcd at 7415 (explaining that the adoption of new RHC Program measures modeled after similar E-Rate Program measures "establish[es] consistency in the administration of the Universal Service Fund program"). The Commission has addressed waiver of the filing window deadline for the RHC Program in specific limited circumstances on a case-by-case basis. *See, e.g., Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 5400, 5402-04 (WCB 2020); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 37 FCC Rcd 6263, 6264-65 (WCB 2022) (waiving the filing window deadline for petitioners that were unable to file timely funding requests due to natural disasters). To improve the administration of the RHC Program, we are applying E-Rate Program precedent to carry over a consistent standard for funding deadline waiver requests to the RHC Program.

²⁶ The waiver requests of Bartlett Regional Hospital, Funding Request Number (FRN) 19634991, and Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621, are granted.

²⁷ *See Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²⁸ The Universal Service Fund, and subsequently the RHC Program, were created based on several principles, including, and not limited to, providing access to advanced telecommunications to all regions of the nation including to healthcare providers, ensuring that services are available at just, reasonable, and affordable rates, and ensuring that rural service and rates are reasonably comparable to those services provided in urban areas. *See* 47 U.S.C. § 254(b). Consistent with Commission precedent established by the E-Rate Program, requiring strict compliance with (continued....)

filed its waiver request 11 days after the deadline.²⁹ In consideration of precedent established by *Academy of Math and Science*, we again find here “that these applications were filed close enough to the deadline so as not to impair the administration of the program.”³⁰ For these reasons, there is good cause to grant petitioners’ waiver requests and remand petitioners’ applications for funding through the RHC program to USAC for further action. We make no finding as to the eligibility of the funding requests that will be filed and instruct USAC to coordinate the filing of requests for funding with the petitioners. While we grant these two waiver requests, we remind applicants of their obligation to comply with the Commission’s procedural rules, including application filing deadlines, which are critical to the efficient operation of the RHC Program.

9. *Denials.* We deny Heart of Texas’ and CCS’s waiver requests where the untimely funding requests were filed by petitioners more than 14 days after the filing window deadline and without special circumstances warranting a waiver of the deadline. Heart of Texas and CCS filed their requests 83 days and 209 days after the close of the filing window, respectively.³¹ Neither party, however, offered or demonstrated special circumstances of the type identified in *Academy of Math and Science* that caused them to miss their deadlines.³² In that order, the Commission denied waiver requests in cases where the funding application was not filed: (1) within 14 days of the close of the filing window; (2) within “a reasonable period of time” following a death or serious illness of the person responsible for filing the application or death of a member of their family; or (3) due to circumstances beyond the petitioner’s control.³³ Heart of Texas did not provide any explanation for its delay.³⁴ CCS did not identify any employee death or illness or other circumstances beyond its control and only references “a misinterpretation of funding year end dates and what was funded and not funded for [funding year] 2023.”³⁵

10. Consistent with the *Academy of Math and Science* precedent, waiver is not warranted for Heart of Texas and CCS since petitioners failed to file their funding requests within 14 days of the close of the filing window and have not shown special circumstances to warrant waiver of the filing window deadline.³⁶ Because we find in these cases that petitioners failed to file their funding request forms within a reasonable amount of time, we deny their requests for waiver.³⁷

(Continued from previous page) _____

the Commission’s rules would conflict with the purposes of the RHC Program and would result in undue hardship to applicants who would benefit from funds under the HCF or Telecom Programs. See *Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²⁹ Consistent with the *Academy of Math and Science* decision, we grant these waiver requests filed within 14 days of the end of the filing window even though the applicants were unable to submit their FCC Forms 462 to USAC because USAC did not allow applicants to electronically submit after the deadline. *Id.* at 9260, n.26. For the purposes of this Order, in light of an applicant’s inability to file the funding request form past the deadline, we treat the date that the request for waiver was filed as a proxy for the date the funding request was filed.

³⁰ *Academy of Math and Science*, 25 FCC Rcd at 9260.

³¹ See Heart of Texas Request for Waiver; Community Counseling Services Request for Waiver.

³² See *Acorn Public Library District*, 23 FCC Rcd at 15476-77 (requiring petitioners who file after 14 days past the filing window deadline to show special circumstances for waiver).

³³ See *Academy of Math and Science*, 25 FCC Rcd at 9261-62.

³⁴ Heart of Texas Request for Waiver at 1 (stating only that its “application was not submitted and still shows in draft mode.”).

³⁵ Community Counseling Services Waiver Request at 1.

³⁶ While the filing deadline in the RHC Program previously has been waived in two instances where the waiver request was filed more than 14 days after the application window deadline and there was no employee death or illness, the unique circumstances of those cases distinguish them from the waiver requests being denied in this

(continued....)

11. *Direction to USAC.* To ensure the smooth application of this decision for future funding years, going forward, we direct USAC to continue to allow health care providers to submit funding requests for the RHC Program for 30 days after the close of each application filing window.³⁸ If the Bureau grants a waiver of the filing deadline for a late-filed funding request submitted within 30 days of the deadline, USAC will then process the funding request as if it had been timely filed. If the health care provider does not request a waiver for a late-filed funding request submitted within 30 days of the deadline or the Bureau denies such a waiver, USAC will dismiss the funding request.³⁹

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 1.3 and 54.722(a), that the appeals filed by petitioners Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621; and Bartlett Regional Hospital, FRN 19634991 are GRANTED and the applications are REMANDED to USAC for further action consistent with this Order.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 1.3 and 54.722(a), that section 54.621(a) of the Commission's rules, 47 CFR § 54.621(a), IS WAIVED for the petitioners Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621; and Bartlett Regional Hospital, FRN 19634991 to the extent provided herein.

(Continued from previous page)

Order. *See Application for Review of Tanana Chiefs Conference, Fairbanks, AK, Rural Health Care Universal Service Support Mechanism*, WC Docket 02-60, Order on Review, FCC 23-41, 2023 WL 3690743 (May 26, 2023) (waiving the filing window deadline for petitioner who presented special circumstances due to “misunderstandings and confusion about the filing deadline” regarding the inaugural RHC Program filing window); *Petition for Waiver of Iliuliuk Family and Health Services, Unalaska, AK, Rural Health Care Universal Service Support Mechanism*, WC Docket 02-60, Order, DA 23-1192, 2023 WL 8877081 (WCB Dec. 20, 2023) (waiving the filing deadline because the health care provider failed to timely file an application due to a confluence of the service provider’s confusion caused by being a new participant in the Rural Health Care Program, medical issues with health care provider personnel responsible for filing applications, and the COVID-19 pandemic). That combination of unique circumstances is not present in the waiver requests denied in this Order.

³⁷ The E-Rate Program has waived the application filing deadline in limited cases where “a serious and unexpected medical condition of the person responsible for filing the E-Rate application” delayed the application’s filing, the delay was “slightly more” than 30 days after the deadline, and the modest increase in time did not “impede the efficient administration of the program.” *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Archdiocese of San Antonio, San Antonio, Texas, et. al., Schools and Libraries Universal Service Support Mechanism, Establishing Emergency Connectivity Fund to Close the Homework Gap*, CC Docket No. 02-6, WC Docket No. 21-93, Order, 37 FCC Rcd 4879, 4881-82 (WCB 2022) (*Archdiocese of San Antonio*) (granting waivers to an application filed 35 days late due to employee’s serious cycling accident and an application filed 43 days late due to employee’s brain surgery). The Heart of Texas and CCS cases involved applications that were filed more than 14 days after the filing deadline, and as explained above did not involve the type of special circumstances outlined in the *Academy of Math and Science* or *Archdiocese of San Antonio* decisions.

³⁸ In the event that there is a waiver extending the close of the application filing, as is the case for funding year 2024, healthcare providers are permitted to continue to submit funding requests for 30 days after the extended close of the filing window. *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, DA 24-214 (WCB rel. Mar. 7, 2024).

³⁹ We direct USAC to allow a health care provider to file an application more than 30 days after the filing deadline if the Bureau waives the deadline after consideration of the circumstances supporting the health care provider’s waiver request. *See, e.g., Archdiocese of San Antonio*, 37 FCC Rcd at 4881-82.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 1.3 and 54.722(a), that the appeals filed by petitioners Heart of Texas Region MHMR Center, FRN 2222293 and Community Counseling Services, FRNs 20827611, 20828001, and 20828271 are DENIED.

15. IT IS FURTHER ORDERED that, pursuant to the authority delegated in 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 N.E.
Washington, DC 20554

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

DA 24-367

Released: April 18, 2024

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY TNS TRANSLINE, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-95¹

Comments Due: May 3, 2024

TNS Transline, LLC (TNS Transline 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, TNS Transline indicates that it intends to initially request numbers in the Commonwealth of Virginia but seeks authority to access numbering resources throughout the United States.³

In its Application, TNS Transline includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.⁴ TNS Transline provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.⁵ TNS Transline 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, TNS Transline certifies that it has the financial, managerial, and technical expertise to provide reliable service.⁷ TNS Transline further certifies that none of its key management and technical personnel are being or have been investigated by the Commission, or any law

¹ We assign WC Docket No. 24-95 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 TNS Transline for Authorization to Obtain Numbering Resources, WC Docket No. 24-95 (filed Mar. 12, 2024), <https://www.fcc.gov/ecfs/document/1031217836719/1>; see also 47 CFR § 52.15(g)(3).

³ Application at 2; 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 1-2, 3-4; see 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

⁵ Application at 2-3; Exhibit C; 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 3-4; see 47 CFR § 52.15(g)(3)(i)(F).

enforcement or regulatory agency, for failure to comply with any law, rule, or order.⁸ Finally, TNS Transline certifies that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.⁹

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 52.15(g)(3)(ii) of the Commission's rules, interested parties may file comments in WC Docket No. 24-95 **on or before May 3, 2024**.¹⁰ Commenters must serve a copy of comments on TNS Transline no later than the above comment filing date.

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at <https://apps.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>
- *People with Disabilities:* We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) DAA@fcc.gov;

⁸ Application at 3-4; 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 47 CFR § 52.15(g)(3)(ii).

- 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.

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.

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

- FCC -

¹¹ See 47 CFR § 1.45(c).



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA No. 24-368

Report No. SAT-01817

Friday April 19, 2024

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MOD-20230717-00173	E S2129	Maxar License Inc.	
Modification			
Grant of Authority			Effective Date: 04/12/2024

Nature of Service: Earth Exploration Satellite Service

On April 12, 2024, the Satellite Programs and Policy Division granted with conditions, the request of Maxar License Inc., for modification of the license for the WorldView-Legion satellites to update certain technical parameters. The WorldView-Legion satellites provide earth exploration-satellite service using the 8025-8400 MHz (space-to-Earth) and 2025-2110 MHz (Earth-to-space) bands.

SAT-MOD-20231116-00286	E S2647	Intelsat License LLC	
Modification			
Grant of Authority			Effective Date: 04/17/2024

Nature of Service: Fixed Satellite Service

On April 17, 2024, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for modification of the authorization for the Galaxy 19 space station by extending its license term through November 17, 2028. Galaxy 19 provides fixed-satellite service at 97.0° W.L. in the 3700-4200 MHz (space-to-Earth), 5925-6425 MHz (Earth-to-space), 11.7-12.2 GHz (space-to-Earth), and 14.0-14.5 GHz (Earth-to-space) frequency bands. Galaxy 19 conducts telemetry, tracking, and command operations using the following center frequencies: 4198.0 MHz, 4198.5 MHz, 4199.0 MHz, 4199.5 MHz (space-to-Earth); and 5925.5 MHz and 6424.5 MHz (Earth-to-space).

SAT-STA-20230518-00115	E	Viasat, Inc.	
Special Temporary Authority			
Withdrawn			Effective Date: 04/18/2024

SAT-STA-20240301-00044	E S2253	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 04/16/2024

Nature of Service: Fixed Satellite Service

On April 16, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 180 days, for Galaxy 11 to provide fixed-satellite service at the 166.3° E.L. orbital location. Galaxy 11 operates in the 3700-4200 MHz, 10.95-11.2 GHz (space-to-Earth), 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands and provides telemetry, tracking and command using the following center frequencies: 11701.0 MHz, 11702.0 MHz (space-to-Earth) 14000.5 MHz and 14498.5 MHz (Earth-to-space).

SAT-STA-20240308-00051 E S3032 BlackSky Global LLC

Special Temporary Authority

Granted in Part / Dismissed in Part

Effective Date: 04/15/2024

Nature of Service: Earth Exploration Satellite Service

On April 15, 2024, the Satellite Programs and Policy Division granted in part, and dismissed in part, with conditions, the request of BlackSky Global LLC for special temporary authority for a period of up to thirty days to operate the BlackSky Global 15 satellite in orbits at altitudes ranging between 340 km and 385 km.

INFORMATIVE

SAT-APL-20240403-00074 S3171 Satelio IoT Services USA, Inc.

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective April 15, 2024. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

SAT-PDR-20230415-00089 S3171 Satelio IoT Services USA, Inc.

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective April 15, 2024. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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

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

In the Matter of

AT&T Services, Inc.

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File No.: EB-IHD-19-00028991
NAL/Acct. No.: 201932080023
FRN: 0018716266

FORFEITURE ORDER

Adopted: April 22, 2024**Released: April 22, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Communications Commission (Commission or FCC) has long standing rules that bar discussions between and among auction applicants during an auction that detract from a fair auction process, and requires auction applicants to self-report immediately any such violations upon their occurrence. In its September 6, 2019 *Notice of Apparent Liability (NAL)*, the Enforcement Bureau (Bureau) proposed a \$75,000 forfeiture penalty against AT&T Services, Inc. (AT&T or Company), the parent company of New Cingular Wireless PCS, LLC (Cingular),¹ for apparently violating section 1.21002(b)² of the Commission's rules by engaging in prohibited communications with AMG Technology Investment Group, LLC (AMG) during the Connect America Fund (CAF) Phase II (CAF-II) auction (Auction 903) and section 1.21002(c)³ by failing to notify the Commission of such communications in a timely manner.⁴ AT&T filed a response to the *NAL* on October 7, 2019, which

¹ At the time the *NAL* was issued, the Commission's rule stated that the term "applicant" shall include "any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant." 47 CFR § 1.21002(a) (2019). Because AT&T controls Cingular, AT&T is also considered an applicant in Auction 903 and therefore subject to all Auction 903 rules and procedures. In 2020, the Commission modified the definition of "applicant." *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12259, para. 210 (2020) (*Establishing a 5G Fund for Rural America*).

² 47 CFR § 1.21002(b).

³ *Id.* § 1.21002(c) (2019). In 2020, the rule for reporting prohibited communications was moved from section 1.21002(c) to section 1.21002(e) of the rules. *See Establishing a 5G Fund for Rural America*, 35 FCC Rcd at 12260, para. 211; *see also* *Establishing a 5G Fund for Rural America*, Final Rule, 85 Fed. Reg. 75770-01, 75816 (Nov. 25, 2020) (redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, under section 1.21002). Unless otherwise noted in this Forfeiture Order, citations to section 1.21002 are referring to the pre-amendment version as applied to AT&T's conduct during the relevant timeframe.

⁴ *AT&T Services, Inc.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7660 (EB 2019) (*NAL*).

requested rescission of the proposed forfeiture.⁵ After reviewing the record in this matter, we affirm the proposed \$75,000 forfeiture penalty and reject AT&T's request to rescind the *NAL*.

II. BACKGROUND

2. *Legal Framework.* The Commission conducted the CAF-II auction to award up to \$198 million annually for 10 years to service providers that committed to offer voice and broadband services to fixed locations primarily in unserved rural areas.⁶ The auction was the first FCC auction to award ongoing universal service support using a multiple-round, reverse auction format.⁷ As part of its rules governing the CAF-II auction (designated as Auction 903), the Commission prohibited an auction applicant "from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies." The rules further prohibited an auction applicant from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.⁸ The purpose of such a quiet period (Quiet Period) is to protect the integrity and competitiveness of the auction process.⁹ For Auction 903, the Quiet Period commenced with the close of the FCC Form 183 (short-form) application filing window on March 30, 2018, at 6:00 p.m. EST, and concluded with the close of the FCC Form 683 (long-form) application filing window on October 15, 2018, at 6:00 p.m. EST.¹⁰ The duty to report potentially prohibited communications within five business days was provided in section 1.21002(c) of the Commission's rules.¹¹

3. *Factual Background.* AT&T (through its wholly owned subsidiary, Cingular)¹² and AMG each submitted a short-form application to participate in Auction 903, and each entity qualified as a

⁵ Response to Notice of Apparent Liability from AT&T Services, Inc. to Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 7, 2019) (on file in EB-IHD-19-00028991) (*NAL Response*).

⁶ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (defining "voice telephony service" as the supported service and requiring Connect America Fund support recipients to offer broadband as a condition of receiving support).

⁷ In prior Mobility Fund and Tribal Mobility Fund auctions, the Commission awarded one-time universal service support using a single-round, reverse auction. *USF/ICC Transformation Order*, 26 FCC Rcd at 17773-824. The CAF-II's auction bidding procedures were designed to enable a bidder to express in a simple and orderly way the amount of support it needed to provide a specified level of service to a specified set of eligible areas. *Connect America Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1431 (2018) (*Procedures Public Notice*).

⁸ 47 CFR § 1.21002(b). During Auction 903, the term "applicant" included any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant. See *id.* § 1.21002(a) (2019). In 2020, the Commission modified the definition of "applicant." See *Establishing a 5G Fund for Rural America*, *supra* note 1, at 12259, para. 210; 47 CFR § 1.21002(a).

⁹ *Procedures Public Notice*, 33 FCC Rcd at 1476, para. 128.

¹⁰ See *id.* at 1432, 1477, 1490, paras. 10, 134, 185; *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, 8267, para. 31 (Rural Broadband Auctions Task Force WTB/WCB 2018) (*Auction 903 Closing Public Notice*).

¹¹ 47 CFR § 1.21002(c) (2019).

¹² Because AT&T controls Cingular, AT&T is also considered an applicant in Auction 903 and therefore, subject to all Auction 903 rules and procedures, including section 1.21002(b) of the rules regarding prohibited communications. See *id.* § 1.21002(a) (2019).

bidder.¹³ In the *NAL*, the Bureau found that during the course of Auction 903, AT&T engaged in prohibited communications with AMG by “cooperating with and participating in discussions with AMG while AMG was repeatedly communicating to AT&T information about its bids, bidding strategies and bidding results” during Auction 903’s Quiet Period.¹⁴ The *NAL* further found that AT&T failed to inform the Commission about its communication with AMG, in apparent willful violation of section 1.21002(c) of the Commission’s rules. The *NAL* proposed a forfeiture in the total amount of \$75,000 against AT&T.¹⁵

4. On October 7, 2019, AT&T filed its response to the *NAL* (*NAL* Response) and requested rescission of the proposed forfeiture. In its response, AT&T did not deny that it had communicated with AMG during the Auction 903 Quiet Period but argued that: (1) it did not impermissibly communicate with AMG about AMG’s bids or bidding strategies;¹⁶ (2) the discussions with AMG occurred *after* bidding in Auction 903 ended, were “post auction,” and could not have affected AMG’s “bids or bidding strategies;”¹⁷ (3) imposing the penalty on a party that “voluntarily reports” potential prohibited communications that “could not and did not affect the auction...” is “unjustified and unjustifiable;”¹⁸ and (4) Commission precedent does not support the proposed forfeiture against AT&T.¹⁹

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with section 503(b)(2)(B) of the Communications Act of 1934, as amended (Act),²⁰ section 1.80 of the Commission’s rules,²¹ and the Commission’s Forfeiture Policy Statement,²² as well as previously assessed forfeitures for similar prohibited communications violations.²³ When we assess forfeitures, section 503(b)(2)(E) requires that we take into account the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁴ We have fully considered AT&T’s *NAL* Response and discuss below why its

¹³ 220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction (Auction 903), Bidding to Begin on July 24, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 6171, 6184-95 (Rural Broadband Task Force/WTB/WCB 2018) (Attach. A: Qualified Bidders sorted by applicant name) (*Qualified Bidders Public Notice*).

¹⁴ *NAL*, *supra* note 4, at 7665, para. 12.

¹⁵ A separate Notice of Apparent Liability was simultaneously issued to AMG. See *AMG Technology Investment Group, LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7649 (EB 2019).

¹⁶ *NAL* Response, *supra* note 5, at 6.

¹⁷ *Id.* at 4, 6 (emphasis in original).

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 11.

²⁰ 47 U.S.C. § 503(b)(2)(B).

²¹ 47 CFR § 1.80.

²² *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²³ See *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007) (*Star Wireless Order on Review*), *appeal denied*, *Star Wireless, LLC v. FCC & USA*, 522 F.3d 469 (D.C. Cir. 2008) (*Star Wireless*); see also *Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009) (*Cascade NAL*).

²⁴ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11); see also 47 CFR § 1.80(b)(2) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 503(b)(2)(B) at \$244,958 for each violation or each day of a continuing violation, up to \$2,449,575 for a violation); *Amendment of Section 1.80(b) of the Commission’s* (continued....)

arguments for rescission are unavailing. Accordingly, we find that the \$75,000 forfeiture penalty proposed in the *NAL* is appropriate.

6. AT&T's participation in prohibited communications with AMG during Auction 903's Quiet Period was willful.²⁵ The factual record indicates that "AT&T, an Auction 903 applicant, engaged in prohibited communications with AMG, another Auction 903 applicant, by cooperating with and participating in discussions with AMG while AMG was repeatedly communicating to AT&T information about its bids, bidding strategies, and bidding results."²⁶ The communications occurred on multiple occasions, in numerous e-mails, and the parties even met in person and by video conference during Auction 903's Quiet Period.²⁷ Thus, AT&T was an active participant in discussions with AMG surrounding AMG's bids, bidding strategies, and bidding results and then failed to report these communications to the Commission in violation of section 1.21002(b) and (c) of the Commission's rules.²⁸ AT&T does not dispute that any of the prohibited communications took place.²⁹ Instead, AT&T essentially argues that its communications during the Auction 903 Quiet Period were harmless. AT&T's argument presupposes that "harm" is an element of the prohibited communications rule. However, it is the substance and timing of specific communications that are key in determining whether there has been a violation of the prohibited communications rule, not the impact or claimed lack thereof on a particular auction.³⁰

A. AT&T Communicated with AMG About AMG's Bids and Bidding Strategies.

7. AT&T's argument that it did not communicate with AMG about AT&T's own bids or bidding strategies is irrelevant because, as AT&T itself noted in its response, the *NAL* does not make such a finding.³¹ Moreover, AT&T's assertion that it did not communicate with AMG about AMG's bids and bidding strategies as alleged in the *NAL* is without merit.³² AT&T claims that these communications related "solely to AMG's existing business with AT&T . . . [and] none related to AMG's bids or bidding strategies in the auction."³³

8. As noted in the *NAL*, e-mails from AMG's CEO stating that AMG was { [REDACTED] } and { [REDACTED] } all contain content

Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

²⁵ See 47 U.S.C. § 312(f)(1) (defining "willful").

²⁶ *NAL*, *supra* note 4, at 7665, para. 12. Because AT&T controls Cingular, AT&T is considered an applicant in Auction 903 and therefore subject to all the Auction 903 rules and procedures, including section 1.21002(b) of the rules regarding prohibited communications.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *NAL Response*, *supra* note 5, at 6.

³⁰ *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18639, para. 7 (EB 2004); *Application of Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18630, para. 8 (EB 2004) (*Star Wireless Forfeiture Order*).

³¹ *NAL Response*, *supra* note 5, at 4. AT&T's *NAL Response* begins by admitting that the "Bureau does not allege that AT&T communicated with AMG regarding AT&T's own bids and bid strategy in the auction. . . ." *NAL Response* at 2. AT&T, however, proceeds to then dedicate a portion of its *NAL Response* to supporting its claim that AT&T did not communicate with AMG regarding its bids or bidding strategies. *Id.* at 5-7.

³² *NAL Response*, *supra* note 5, at 1.

³³ *Id.* at 1-2.

that extends beyond the scope of “existing business” between the companies.³⁴ Rather, these statements all indicate AMG’s desire for the existing business relationship potentially to expand based on the Auction 903 bidding strategy that AMG was implementing. AT&T’s “existing business” argument fails when we consider the mix of existing business with the status of AMG’s bids and bidding strategies during the course of Auction 903, premising one upon the other. For example, as noted by AT&T, AMG requested from AT&T a proposal {[REDACTED]}³⁵ This discussion by itself related to existing business, however, in the same e-mail, AMG also discussed its plans to bid in Auction 903 when it stated that “[REDACTED]”. AT&T does not and cannot identify an exception to our auction rules in which an active auction participant like AMG could permissibly communicate its bidding strategy in Auction 903 to another applicant so long as it is also discussing existing business. AT&T cannot selectively ignore the portions of AMG’s communications that discuss AMG’s bids or bidding strategies in the CAF-II auction. Granting such an exception would essentially render the prohibited communications rule meaningless.³⁶

9. Additionally, AT&T argues that it has rigorous safeguards in place for auctions that protect against inadvertent communications from reaching employees who are part of the company’s auction bid team.³⁷ It attempts to rely on its internal processes to comply with an otherwise non-existent element of the prohibited communications rule. Accordingly, AT&T’s assertion that the Company employees who received AMG’s Auction 903 bidding plans “were not part of AT&T’s bid team, and thus could not engage in any collusive behavior with AMG”³⁸ is unavailing.³⁹ The Commission put Auction 903 participants on notice to “take special care in circumstances where officers, directors, and employees may receive information directly or indirectly relating to any other applicant’s bids or bidding strategies. Information received by a party related to the applicant may be deemed to have been received by the applicant under certain circumstances.”⁴⁰ While the particular Company employees who received AMG’s plans may not have been part of AT&T’s Auction 903 bid team, in fact AMG’s e-mail information

³⁴ NAL, *supra* note 4, at 7663-64, paras. 8-9. Material set off by braces and brackets {[]} is confidential business information and is redacted from the public version of this document.

³⁵ Letter from Cathy Carpino, Assistant Vice President and Sr. Legal Counsel, AT&T Services, Inc., to Margaret W. Weiner, Chief, Auction and Spectrum Access Division, Wireless Telecommunications Bureau, FCC, Attachment 1 (Sept. 20, 2018) (on file in EB-IHD-19-00028991) (AT&T Disclosure Letter).

³⁶ AT&T also argues that its communications were permissible because the Auction 903 process itself “signaled that the Commission wanted and expected winning bidders to engage in network planning as soon as possible post auction” and that “smaller companies, like AMG, would want to have conversations with potential suppliers to that end[.]” NAL Response, *supra* note 5, at 15-16. In the same vein, AT&T asserts that its communications to AMG related “only to AMG’s *existing* footprint – and, specifically AMG’s existing business with AT&T or the opportunity to provide service to AMG’s *existing* [network].” *Id.* at 6-7 (emphasis in original). It further asserts that the Commission stated that “business discussions and negotiations that are *unrelated* . . . to post-auction market structure are not prohibited[.]” *Id.* at 7. AT&T’s arguments fall short because it is based on misplaced presumptions of the prohibited communications rule and the Commission’s intent. As discussed herein, the substance of the relevant communications demonstrate that they were about AMG’s bids and bidding strategies within the scope of the prohibited communications rule.

³⁷ NAL Response, *supra* note 5, at 4-5.

³⁸ *Id.* at 4, 8.

³⁹ See, e.g., *Procedures Public Notice*, *supra* note 7, at 1480, para. 144 (noting that although precautionary measures can be taken when communication bids or bidding strategies to a third-party, it “is not an absolute defense to liability, if a violation of the rule has occurred.”).

⁴⁰ *Id.* at 1477, para. 133. Although information received by a party related to an applicant may be deemed to have been received by an applicant, there is no provision in the rule that the communication must be received by an applicant’s authorized bidder(s) or bidding team for a prohibited communication to occur.

ultimately reached AT&T's Assistant Vice President and Senior Legal Counsel, who reported AMG's communications to the Commission.⁴¹

B. The Quiet Period Controls.

10. AT&T does not deny that the communications occurred or when they occurred. AT&T contends, however, that the meetings and discussions with AMG that occurred after bidding in Auction 903 ended were “post auction” and “could not have, and did not, affect AMG’s ‘bids or bidding strategies.’”⁴² AT&T argues that its introductory discussions with AMG “about business opportunities over the next several years, *occurring after bidding was completed and the Commission announced winning bidders*, were not the collusive communications the Commission’s rule was designed to identify.”⁴³ Further, AT&T alleges that it lacked notice that the Bureau would interpret the Commission’s rules to “prohibit such post-auction, high level discussions.”⁴⁴

11. The Company characterizes the communications as permissible by interpreting the Commission’s rules to include a “post-auction but still during the Quiet Period” exception to the prohibited communications rule. Such an exception does not exist. AT&T’s interpretation contradicts the Commission’s rules and policies regarding prohibited communications during Auction 903’s Quiet Period. First, the prohibited communications rule set forth in section 1.21002(b) and applicable to Auction 903 states that: “[a]fter the deadline for submitting applications to participate [in an auction], an applicant is prohibited from communicating with any other applicant in any manner the substance . . . [of] one another’s . . . bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications.”⁴⁵ It is the substance and timing of specific communications that are key in determining whether there has been a violation of the prohibited communication rule, not the impact or claimed lack thereof on a particular auction or auction applicant.⁴⁶ Second, the *Auction 903 Closing Public Notice* informed applicants that the Quiet Period extended until the deadline for filing the long-form application portion of FCC Form 683, i.e., October 15, 2018, at 6:00 p.m. ET.⁴⁷ It is undisputed that AMG’s various e-mails to and meetings with AT&T all occurred before October 15, 2018. Thus, these “post-auction but still during the Quiet Period” communications fall clearly within the scope of the rule, and the “notice” that AT&T purportedly lacked had been provided at various stages throughout the Auction 903 process. As such, we find that AT&T is liable for violating section 1.21002(b) of the Commission’s rules.

C. AT&T Failed to Report the Prohibited Communications in a Timely Manner.

12. The disclosure requirements of section 1.21002(c) of the Commission’s rules are straight forward, “[a]n applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs.”⁴⁸ “An applicant” is defined as

⁴¹ See AT&T Disclosure Letter, *supra* note 35.

⁴² NAL Response, *supra* note 5, at 4, 6 (emphasis in original).

⁴³ *Id.* at 12 (emphasis in original).

⁴⁴ *Id.* at 9.

⁴⁵ 47 CFR § 1.21002(b).

⁴⁶ *Star Wireless Forfeiture Order*, *supra* note 30, at 18630, para. 8. See *Star Wireless*, *supra* note 23, at 475 (“general bright-line prophylactic measures, such as the anti-collusion rule, are appropriate when ‘the probability of abuse in transactions between related organizations is significant enough that it is more efficient to prevent the opportunity for abuse from arising than it is to try to detect actual incidents of abuse.’”) (citations omitted).

⁴⁷ *Auction 903 Closing Public Notice*, *supra* note 10, at 8268, para. 31.

⁴⁸ 47 CFR § 1.21002(c) (2019).

all controlling interests in the entity submitting an application to participate in a given auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the application, and all officers and directors of that entity.⁴⁹

13. As noted in the *NAL*, AT&T did not report the prohibited communications with AMG until 86 days after the first known prohibited communications on June 27, 2018, and 13 days after the last known prohibited communication on September 7, 2018. Notably, on September 11, 2018, AT&T's legal counsel informed AMG that AT&T would cease communications with AMG until the Quiet Period ended.⁵⁰ However, AT&T did not notify the Commission of the communications until September 20, 2018.⁵¹ This was beyond the five-day deadline set by section 1.21002(c) for applicants to notify the Commission of any communication made or received that may be a prohibited communication. Nevertheless, AT&T argues that the Commission "has never fined a party solely for not meeting the Commission's five-business-day reporting deadline."⁵² It also argues that penalizing a party that "voluntarily reports" potential prohibited communications that "could not and did not affect the auction, even if the report is not made within the five days the rule requires" is "unjustified and unjustifiable."⁵³ We reject these arguments as clearly contrary to the rule on its face and the purpose underlying the enactment of the rule.

14. To be clear, AT&T is not being fined *solely* for not meeting the Commission's five-business-day reporting deadline. It is being fined both for violating the Commission's rules on prohibited communications during an auction Quiet Period *and* for violating the five-business day reporting deadline.⁵⁴ The requirements of section 1.21002(c) of the rules are unambiguous, "[a]n applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs."⁵⁵ The reporting requirement does not stand alone. First, there must be a violation of the prohibited communications rules in order for there to be something to report within five business days. Second, if the prohibited communication is not reported within five business days, then there is a violation of the reporting requirement. Timely reporting a prohibited communication is mandatory and there is no exception based upon the effect a prohibited communication purportedly has on the auction. AT&T's reporting of the prohibited communications was neither immediate, nor within 5 business days. Accordingly, the Commission's finding of a violation of section 1.21002(c) of the Commission's rules is appropriate in these circumstances.

D. Commission Precedent Supports the Forfeiture.

15. AT&T maintains that the Commission has never issued an enforcement action or entered into a consent decree with a party that had discussions with another auction applicant during the Quiet Period but "*after bidding concluded and after the Commission publicly announced winning bidders.*"⁵⁶

⁴⁹ 47 CFR § 1.21002(a) (2019).

⁵⁰ *NAL*, *supra* note 4, at 7664, para. 8.

⁵¹ *Id.* at 7664, para. 9.

⁵² *NAL Response*, *supra* note 5, at 20.

⁵³ *Id.*

⁵⁴ *See, e.g., LTD Broadband, LLC*, DA 22-482, Notice of Apparent Liability, 37 FCC Rcd 5736, 5736, para. 2 (EB 2022) (proposing a forfeiture penalty against the company for repeatedly engaging in prohibited communications during Auction 904 and its failure to timely report such prohibited violations).

⁵⁵ 47 CFR § 47.21002(c) (2019).

⁵⁶ *NAL Response*, *supra* note 5, at 14 (emphasis in original).

AT&T argues that the “*NAL* expands the application of the anti-collusion rule to a context that bears no relationship to its underlying purpose and for which there is no precedent.”⁵⁷

16. The history of the prohibited communications rule demonstrates that our auction rules are concerned about the potential of the communications and not merely the effect, and it is not limited to prohibited communications made before bidding has closed.⁵⁸ To put it another way, were AT&T’s interpretation of the Quiet Period correct, applicants could ignore the Quiet Period and discuss their bids and bidding strategies as long as the applicants could later show that there was no collusive effect. AT&T’s assertion that the underlying purpose of the prohibited communications rule is not served by a Quiet Period that extends to after bidding has concluded is erroneous. AT&T overlooks the potential for prohibited communications between applicants in the period between the announcement of winning bidders and the long-form application deadline to facilitate anti-competitive behavior. The rule guards against collusion among winning bidders, and between winning bidders and non-bidding applicants or non-winning bidders, including, but not limited to, coordination of defaults.

17. AT&T further argues that the Bureau arrived at its conclusions in the *NAL* by relying on a “novel and unnecessarily broad reading of the prohibited communications rule.”⁵⁹ AT&T’s position is misplaced as section 1.21002(b) plainly prohibits certain communications within the clearly defined Quiet Period. The Commission’s interpretation is neither novel nor broad. Nonetheless, AT&T argues that Commission precedent related to the Commission’s prohibited communications rules involve communications between “auction applicants while bidding was ongoing.”⁶⁰ Whether the Commission has infrequently issued an enforcement action or entered into a consent decree with a party that engaged in prohibited discussions in a specific context does not in and of itself invalidate the rule. The responsibility for determining the elimination or modification of a Commission rule lies with the Commission, not a licensee. Moreover, participants have an affirmative obligation to know and abide by the Commission’s rules under Auction 903, including their obligations during the Quiet Period.⁶¹

⁵⁷ *Id.* at 16.

⁵⁸ See *Star Wireless Forfeiture Order*, *supra* note 30, at 18630, para. 8 (“[I]t is the substance and timing of specific communications that are key in determining whether there has been a violation of section 1.2105(c), not the impact or claimed lack thereof on a particular auction.”). As noted by AT&T, the prohibited communications rule was first adopted in 1994 to prevent parties “from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders,” thereby “undermin[ing] the competitiveness of the bidding process and prevent[ing] the formation of a competitive post-auction market structure.” *NAL*, *supra* note 4, at 12-13 (citing *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2386 para. 221 (1994) (*Competitive Bidding Second Report and Order*)). The prohibited communications rule was designed to reinforce existing laws and facilitate detection of collusive conduct by requiring applicants to disclose in their short form applications information about any partnerships, joint ventures, consortia or other agreements, arrangements or understandings relating to the licenses being auctioned. See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2387-877, para. 225. Once the short-form applications are filed, “bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder’s short-form application.” *Id.* Thus, a prohibited communication can only occur when, as here, the communication occurs after the filing of the short form applications and during the Quiet Period.

⁵⁹ *NAL Response*, *supra* note 5, at 1. Although AT&T alleges that it engaged in high-level meetings and “ordinary course business planning discussions that could have no impact on the integrity of the auction, AT&T then offers that the discussions were necessary for the “efficient business planning and operations required to make this auction a success.” *Id.* at 1, 2.

⁶⁰ *Id.* at 17.

⁶¹ 47 CFR § 0.406 (“Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business. All of the rules have been published and are readily available.”). See also *Commission’s Forfeiture Policy Statement and Amendment of section 1.80 of the Rules to* (continued....)

Participants were given ample notice of the Quiet Period and that timeframe, as discussed above, is well-defined. Given the unambiguous language of the Commission's rules, the duration of the Quiet Period should have been readily apparent to AT&T. There is no exception to section 1.21001(b) of the rules regarding conversations after bidding concluded and after public announcement of an auction's winning bidders. Hence, the forfeiture is appropriate in these circumstances.

IV. CONCLUSION

18. Based on the record before us, we conclude that AT&T willfully violated section 1.21002(b) and (c) of the Commission's rules. Pursuant to section 503(b)(2)(E) of the Act and section 1.80 of the Commission's rules, AT&T is liable for a \$75,000 forfeiture of these violations. We decline to cancel or reduce the forfeiture amount proposed in the *NAL*.

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and sections 0.111, 0.311, and 1.80 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.80, AT&T Services, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventy-five thousand dollars (\$75,000) for willfully violating section 1.21002(b) and (c) of the Commission's rules.⁶²

20. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. AT&T Services, Inc. shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, and Tram Pham, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, and Tram.Pham@fcc.gov, on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act, 47 U.S.C. § 504(a).

21. In order for AT&T Services, Inc. to pay the proposed forfeiture, AT&T Services, Inc. shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁶³

- 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 159⁶⁴ or printed CORES form⁶⁵ 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

Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17099, para. 22 (1997), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) ("The Commission expects, and it is each licensee's obligation, to know and comply with all of Commission's rules.").

⁶² 47 CFR § 1.21002(b)-(c).

⁶³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁶⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁶⁵ 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>.

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).⁶⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.

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

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

23. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Cathy Carpino, AT&T Services, Inc., 1120 20th Street, NW, Suite 1000, Washington, DC 20036 and Glenis McKoy, AT&T Services, Inc., 601 New Jersey Ave NW, Suite 400, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

⁶⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

3953

proposed forfeiture.⁵ After reviewing the record in this matter, we reject AMG's request to cancel or reduce the forfeiture penalty proposed in the *NAL*, and we impose the \$100,000 forfeiture.

II. BACKGROUND

2. *Legal Framework.* The CAF-II auction was implemented to award up to \$198 million annually for 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas.⁶ It was the first FCC auction to award ongoing high-cost universal service support using a multiple-round, reverse auction format.⁷ For the CAF-II auction, section 1.21002(b) of the Commission's rules provided that an applicant is prohibited:

from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.⁸

Auction 903's quiet period commenced with the close of the FCC Form 183 (short-form) application filing window on March 30, 2018, at 6:00 p.m. EST, and concluded with the close of the FCC Form 683 (long-form) application filing window on October 15, 2018, at 6:00 p.m. EST (Quiet Period).⁹ An applicant's duty to report potentially prohibited communications immediately or in any case within five business days was set out in section 1.21002(c) of the Commission's rules.¹⁰

3. *Factual Background.* AMG and AT&T's wholly owned subsidiary, Cingular, each submitted a short-form application to participate in Auction 903 and each entity qualified as a bidder.¹¹ In the *NAL*, the Bureau found that during the course of Auction 903, AMG apparently violated section 1.21002(b) of the rules by communicating with AT&T regarding "prohibited information about its bids, bidding strategies and bidding outcome to AT&T . . . on at least seven separate occasions . . . during the

⁵ Response to Notice of Apparent Liability from AMG Technology Investment Group, LLC, to Chief, FCC Enforcement Bureau (Oct. 7, 2019) (on file in EB-IHD-19-00028994) (*NAL Response*).

⁶ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (defining "voice telephony service" as the supported service and requiring Connect America Fund support recipients to offer broadband as a condition of receiving support).

⁷ In prior Mobility Fund and Tribal Mobility Fund auctions, the Commission awarded one-time universal service support using a single-round, reverse auction. *USF/ICC Transformation Order*, 26 FCC Rcd at 17773-824. The CAF-II auction's bidding procedures were designed to enable a bidder to express in a simple and orderly way the amount of support it needed to provide a specified level of service to a specified set of eligible areas. *Connect America Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1431 (2018) (*Procedures Public Notice*).

⁸ 47 CFR § 1.21002(b).

⁹ See *Procedures Public Notice*, 33 FCC Rcd at 1432, 1477, 1490, paras. 10, 134, 185; *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, 8267, para. 31 (Rural Broadband Auctions Task Force WTB/WCB 2018) (*Auction 903 Closing Public Notice*).

¹⁰ 47 CFR § 1.21002(c) (2019).

¹¹ *220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction (Auction 903), Bidding to Begin on July 24, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 6171, 6184-95 (Rural Broadband Task Force/WTB/WCB 2018) (Attach. A: Qualified Bidders sorted by applicant name) (*Qualified Bidders Public Notice*).

Quiet Period.”¹² The Bureau further found that AMG had failed to report these communications with AT&T to the Commission in a timely manner, in apparent willful violation of section 1.21002(c) of the Commission’s rules.¹³ The *NAL* proposed a forfeiture in the amount of \$100,000 against AMG.¹⁴

4. On October 7, 2019, AMG filed its response to the *NAL*, requesting cancellation of the *NAL* or in the alternative, that the proposed forfeiture be substantially reduced.¹⁵ In support of its position, AMG characterized the communications with AT&T as “mere” and not “prohibited” communications¹⁶ and argued that: (1) the Bureau goes beyond its authority and construes any communication between applicants mentioning Auction 903 as a prohibited communication;¹⁷ (2) the Bureau substantially expands the scope of the terms “bids or bidding strategies;”¹⁸ (3) the Bureau “conflates” general business discussions between an applicant and an applicant’s affiliated entities with communications regarding the “post-auction market structure;”¹⁹ (4) the Bureau is not authorized to render a decision on an issue of first impression regarding the sharing of information by an auction applicant with non-officers of an affiliate of an auction applicant;²⁰ (5) the relevant facts in this case do not support a forfeiture;²¹ and (6) any forfeiture assessed should be reduced based on AMG’s history of compliance with the Commission’s rules.²² AMG also claims it had no reason to believe that when the communications occurred there was anything to report as AMG and AT&T “were mutually unaware that Cingular was an applicant” in Auction 903.²³ For the reasons discussed below, AMG’s arguments are unavailing. Notably, AMG does not deny that the communications at issue took place, or the dates when the communications were made.

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with section 503(b)(2)(B) of the Communications Act of 1934, as amended (Act),²⁴ section 1.80 of the Commission’s rules,²⁵ and the Commission’s Forfeiture Policy Statement²⁶ as well as previously assessed forfeitures for similar prohibited communications violations.²⁷ When we assess forfeitures, section 503(b)(2)(E) of the Act

¹² *NAL*, *supra* note 4, at 7653, para. 12.

¹³ *Id.* at 7654, para. 13.

¹⁴ *Id.* at 7649, para. 2. A separate Notice of Apparent Liability was simultaneously issued to AT&T. *See AT&T Services, Inc.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7660 (EB 2019) (*AT&T NAL*).

¹⁵ *See generally* *NAL* Response, *supra* note 5.

¹⁶ *Id.* at iii.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 12.

²¹ *Id.* at 14.

²² *Id.* at 19.

²³ *Id.* at iv.

²⁴ 47 U.S.C. § 503(b)(2)(B).

²⁵ 47 CFR § 1.80.

²⁶ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁷ *See Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007) (*Star Wireless Order on Review*), *appeal denied*, *Star Wireless, LLC v. FCC & USA*, 522 F.3d 469 (D.C. Cir. (continued....))

requires that we take into account the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁸ We have fully considered the arguments in AMG’s NAL Response and find them unpersuasive. We therefore impose the \$100,000 forfeiture proposed in the NAL.

6. *Liability.* The record indicates that AMG, an Auction 903 applicant, engaged in several prohibited communications with AT&T, another Auction 903 applicant. AMG’s prohibited communications with AT&T on eight separate occasions during Auction 903’s Quiet Period was willful.²⁹ As detailed in the NAL, the communications were prohibited because the subject matter and substance were about AMG’s bids, bidding strategies, and bidding outcomes; occurred on multiple occasions, in numerous e-mails, and even in person and by video conference; and all of these incidents occurred during Auction 903’s Quiet Period.³⁰ Thus, AMG was an active participant in prohibited communications with AT&T surrounding AMG’s bids, bidding strategies, and bidding results, and then failed to report these communications to the Commission in violation of section 1.21002(b) and (c) of the Commission’s rules.³¹

7. AMG’s NAL Response attempts to turn the Commission’s rules and requirements for Auction 903 on their head to avoid application of the prohibited communications rule. In the Auction 903 *Procedures Public Notice*, the Commission was clear that “the terms contained in the Commission’s rules, relevant order, and public notices *are not negotiable*.”³² The record demonstrates that AMG violated the Commission’s rules for Auction 903 regarding prohibited communications and as such, is liable for the entire forfeiture amount.

A. The Bureau’s Determination that AMG’s Communications Are Prohibited Under the Commission’s Anti-Collusion Rules Was Well Within its Delegated Authority.

8. We have considered each of AMG’s arguments and find that each argument fails on substantive grounds. AMG claims that the Commission finds fault with what AMG characterizes as “mere communications, as opposed to prohibited communications” and does so without a “complete analysis under the Commission’s rules and prior statements of policy that underpin the rule.”³³ Additionally, AMG asserts that the Commission’s rules expressly limit the scope of prohibited communications to those that involve “cooperating or collaborating with any other applicant with respect to its own, or one another’s, or any other competing applicant’s bids or bidding strategies,”³⁴ and the Bureau’s approach substantially expands the scope of the terms “bids or bidding strategies.”³⁵ Next, AMG accuses the Bureau of “conflating” general business discussions with communications regarding the post-auction market structure.³⁶ Lastly, AMG argues that the Bureau is acting outside its delegated authority to decide this matter as this is a case of first impression regarding the import of information

2008) (*Star Wireless*); *Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009), *forfeiture issued*, Forfeiture Order, 28 FCC Rcd 141 (EB 2013), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015) (*Cascade NAL*).

²⁸ 47 U.S.C. § 503(b)(2)(E).

²⁹ NAL, *supra* note 4, at 7652-53, paras. 8, 10; *see* 47 U.S.C. § 312(f)(1) (defining “willful”).

³⁰ NAL, *supra* note 4, at 7652-53, paras. 8, 10.

³¹ *Id.* at 7653-54, para. 12-13.

³² *Procedures Public Notice*, *supra* note 7, at 1432, para. 6 (emphasis added).

³³ NAL Response, *supra* note 5, at 5.

³⁴ *Id.* (citing 47 CFR § 1.21002(b)).

³⁵ *Id.* at 9.

³⁶ *Id.* at 10.

shared with non-officers of an affiliate of an auction applicant. We find that AMG's interpretations of the Commission rules are incorrect.

1. The Auction 903 Rules and Policies are Clear that Communications Discussing Bids or Bidding Strategies During the Quiet Period Are Prohibited.

9. AMG claims that the *NAL* extends the limited scope of communications that the Commission previously described as prohibited by treating the mere mention of auction participation as “information that affects, or has the potential to affect, bids and bidding strategies,” and that the Bureau offers “no explanation of how such general statements ‘could detract from a fair auction process.’”³⁷ AMG argues its communications with AT&T are non-violative because the communications provided “no substantive, actionable information that ‘has the potential to affect, bids and bidding strategies’”³⁸ and that “nothing of substance regarding the bidding process is conveyed.”³⁹ AMG asserts that the Commission has not expressly defined the terms “bids” or “bidding strategies” and specific elements may “vary according to the subject matter of the auction.”⁴⁰

10. The Auction 903 rules and requirements were unambiguous: “the prohibition on ‘communicating in *any* manner’ includes . . . private communications and indirect or implicit communications, *as well as express* statements of bids and bidding strategies.”⁴¹ AMG’s statements communicating that the Company was { [REDACTED] }, and { [REDACTED] }⁴² are directly related to AMG’s bidding in Auction 903 and convey information about AMG’s Auction 903 bids and bidding strategies. These communications fall squarely within the scope of the prohibited communications rule. The Commission stated that “communicating how a party will participate, including specific states and/or tier and latency combinations selected, specific percentages bid, and/or *whether or not the party is placing bids*, would convey bids or bidding strategies and would be prohibited.”⁴³ Nonetheless, AMG argues that this “does not support the conclusion that a party stating that it is actively participating violates the rule[.]”⁴⁴ AMG argues that “it is only a statement that an applicant is not bidding or has dropped out that ‘could detract from a fair auction process,’” that is within the scope of the prohibited communications rule.⁴⁵ AMG’s arguments miss the mark because the Commission’s rule encompasses a non-exhaustive list of the types of communications that may be prohibited. Further, this case is not simply about whether or not AMG *applied* to Auction 903, rather it is the substance of the relevant communications that implicate the prohibited communications rule. The substance of the communications reveal how AMG participated in Auction 903.

³⁷ *Id.* at 7 (citing *NAL*, *supra* note 4, at 7649, para. 1).

³⁸ *Id.* at 7 (citing *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6771, para. 492 (2014)).

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 6.

⁴¹ *Procedures Public Notice*, *supra* note 7, at 1477, para. 132 (emphasis added); *see also NAL*, *supra* note 4, at 7656, para. 18.

⁴² *See NAL*, *supra* note 4, at 7652, para. 8. Material set off by braces and brackets { [] } is confidential business information and is redacted from the public version of this document.

⁴³ *Procedures Public Notice*, *supra* note 7, at 1478, para. 138 (emphasis added).

⁴⁴ *NAL Response*, *supra* note 5, at 7, n.32 (citing to *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction (Auction 1000)*, Public Notice, 30 FCC Rcd 10794, 10796, para. 8 (2015)).

⁴⁵ *Id.*

11. AMG also claims that its communications with AT&T that the Company was “[REDACTED]” provide no substantive, actionable information that “has the potential to affect, bids and bidding strategies” and that “nothing of substance regarding the bidding process is conveyed” by its communications.⁴⁶ As the Commission stated in the past, however, “it is the substance and timing of specific communications that are key in determining whether there has been a violation [of the prohibited communications rule], not the impact or claimed lack thereof on a particular auction.”⁴⁷ AMG’s statements were all delivered during the Quiet Period for Auction 903 and its statements each conveyed AMG’s bidding position or strategies in the auction. As such, the substance and timing of AMG’s communications violated the prohibited communications rules for Auction 903. That the Company does not believe it affected the results of Auction 903 is irrelevant because the prohibited communications rule does not require proof that the auction would have been altered but for the communications. Instead, the Company violated the prohibited communications rule by sharing communications during the Quiet Period with another auction applicant that were about Auction 903 and were precisely of the nature that the rule was intended to address.

12. In rendering its *NAL*, the Bureau followed the plain language of section 1.21002(b) of the Commission’s rules, the rule in place for Auction 903. AMG argues that “mere statements of AMG’s intention to bid or that it was actively bidding in the auction” made in the context of ongoing business discussions are not instances of prohibited communications.⁴⁸ AMG is incorrect. The plain language of section 1.21002(b) of the Commission’s rules, and its statements in the *Procedures Public Notice*, are clear and unambiguous and covers “any communications conveying, in whole or part, directly or indirectly, the applicant’s or a competing applicant’s bids or bidding strategies.”⁴⁹ Thus, whether it is “mere” statements during business discussions or direct communications among authorized bidders, if the communications convey an applicant’s bid or bidding strategies, such as whether an applicant is actively bidding, during an auction’s Quiet Period, the communication is prohibited. As such, AMG’s communications to AT&T, another applicant in Auction 903, during the Quiet Period, were prohibited.

2. The Bureau’s *NAL* Is Based on the Scope and Parameters for Prohibited Communications During Auction 903.

13. According to AMG, the “effect” of the Bureau’s *NAL* is to expand the scope of prohibited communications arbitrarily “well beyond ‘bids and bidding strategies’ to encompass ‘bidding results’ and ‘bidding outcomes.’”⁵⁰ AMG questions “how *post-auction* statements about what has already occurred could have a retroactive adverse impact on the bids and bidding strategies that produced those results.”⁵¹

14. In adopting the procedures for Auction 903, the Commission was clear in its directive: “[t]he terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable.”⁵² Also clear was the requirement to comply with section 1.21002(b) of the Commission’s

⁴⁶ NAL Response, *supra* note 5, at 7.

⁴⁷ *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18639, para. 7 (EB 2004).

⁴⁸ NAL Response, *supra* note 5, at 3.

⁴⁹ *Procedures Public Notice*, *supra* note 7, at 1477-78, para. 135 (emphasis added). See also *id.* at 1478, para. 138 (“[C]ommunicating how a party will participate, including specific states and/or tier and latency combinations selected, specific percentages bid, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.”).

⁵⁰ NAL Response, *supra* note 5, at 9.

⁵¹ *Id.* AMG’s question overlooks the potential for prohibited communications between applicants in the period between the announcement of winning bidders and the long-form application deadline to facilitate anti-competitive behavior.

⁵² *Procedures Public Notice*, *supra* note 7, at 1432, para. 6.

rules regarding the prohibition of communications *during the Quiet Period*, which includes a period of time post-auction.⁵³ The Commission even clarified that the prohibition “applies to any communication conveying, in whole or part, directly or indirectly, the applicant’s or a competing applicant’s bids or bidding strategies.”⁵⁴

15. AMG claims its communications with AT&T did not violate the prohibited communications rule because some occurrences occurred after the auction closed. This argument is not convincing since all communications at issue occurred during the Quiet Period. Furthermore, two of AMG’s e-mails were sent *prior to* the commencement of bidding; one e-mail was sent *during* the bidding process; one e-mail was sent prior to the FCC’s announcement of the winning bidders; one e-mail was sent the day the FCC announced the auction’s winning bidders; and two e-mails were sent after the Public Notice announcing the auction winners.⁵⁵ AMG’s e-mails were explicitly about AMG’s auction bidding plans before, during, and after the auction process, and each one was sent during the Quiet Period.⁵⁶ In addition to the Company’s e-mails, representatives from AMG and AT&T met at AMG’s headquarters and separately participated in a video conference—both meetings included discussions about AMG’s bidding results in the CAF-II auction and both meetings occurred during the Quiet Period.⁵⁷ AMG attempts to shorten the Quiet Period *sua sponte*, but does so in clear contravention of the Commission’s definition of auction Quiet Period.⁵⁸ All of the communications at issue occurred during the Quiet Period. Accordingly, AMG violated section 1.21002(b) of the rules.⁵⁹

3. AMG’s Communications Were Not Post-Auction General Business Discussions.

16. AMG takes issue with the *NAL* by claiming that the Bureau finds fault with AMG’s communications because they involved the “post-auction market structure.”⁶⁰ AMG asserts that the *Procedures Public Notice* provides that “[b]usiness discussions and negotiations that are unrelated to bidding in Auction 903 and that do not convey information about CAF-II bids or bidding strategies are not prohibited by the rule,” and that “not all auction-related information is covered by the prohibition.”⁶¹ AMG, however, mischaracterizes the Bureau’s reasoning in the *NAL*.

17. In its *NAL*, the Bureau determined that three of the eight communications cited in the *NAL* included discussions of AMG’s post-auction market structure.⁶² The Bureau then looked to the

⁵³ *Id.* at 1476, para. 128.

⁵⁴ *Id.* at 1477-78, para. 135.

⁵⁵ See *NAL*, *supra* note 4, at 7652, para. 8.

⁵⁶ See generally, *NAL*, *supra* note 4.

⁵⁷ *Id.* at 7652, para. 8. As noted in the *NAL*, the parties’ meeting at AMG headquarters resulted in yet another e-mail to AT&T with Mr. Baker stating that he { [REDACTED] }⁵⁷ *Id.* Moreover, the purpose of the video conference was to discuss with AT&T whether { [REDACTED] }⁵⁷ *Id.*

⁵⁸ *Id.* at 7650, para. 5.

⁵⁹ 47 CFR § 1.21002(b).

⁶⁰ *NAL* Response, *supra* note 5, at 10 (*citing to NAL*, *supra* note 4, at 7654, para. 12).

⁶¹ *Id.* at 10.

⁶² *NAL*, *supra* note 4, at 7652, para. 8. On August 31, 2018, AMG’s managing member and majority owner, Mr. Bill Baker, sent an e-mail to AT&T stating that he “{ [REDACTED] }” *Id.* Additionally, on September 4, 2018, representatives from { [REDACTED] }

Procedures Public Notice which cautioned Auction 903 applicants to “avoid direct or indirect communications with another applicant that (i) relate to any [CAF-II] auction eligible area(s) and (ii) address [CAF-II] support levels, including potential arrangements regarding the post-auction market structure in eligible areas.”⁶³ According to the Bureau, “*not only* did AMG relay numerous messages about its bidding, and signal its aggressive bidding strategy to AT&T, but . . . it *also* communicated with AT&T about future business opportunities in Auction 903 eligible areas.”⁶⁴ Thus, each of the post-auction communications identified by the Bureau, made during the auction’s Quiet Period, either discussed AMG’s bids or its bidding strategies, including some that also discussed post-auction market structure options.

18. AMG attempts to obscure its “post-auction market structure” communication(s) by arguing that the market structure terminology may not be relevant to the CAF-II auction as the auction involved the award of subsidy funding and not the acquisition of new licenses to initiate service in specific markets.⁶⁵ AMG, however, does not and cannot point to any exemption in the CAF-II auction rules or policies regarding the relevance or irrelevance of post-auction market structure discussions.⁶⁶ Section 1.21002(b) provided that applicants are prohibited from communicating with any other applicant “in any manner the substance of its own, or one another’s, or any other competing applicant’s bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.”⁶⁷ As such, all of the communications outlined in the *NAL*, not just the communications discussing the post-auction market structure, were prohibited. And AMG does not convincingly demonstrate why any of the prohibited communications should be considered permissive, let alone all eight of them in order to prevail on its assertion that the communications were permissible. Indeed, AMG made no attempt to discuss each of the eight individual prohibited communications at all.

4. AMG’s Prohibited Communications Do Not Constitute a Case of First Impression for the Bureau.

19. AMG is incorrect that this was a matter of first impression when it argues that “Commission staff have not addressed a situation where non-officers or directors receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.”⁶⁸ AMG is also incorrect that the Chief of the Enforcement Bureau is not authorized to resolve “matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.”⁶⁹ The legal question before us is not novel for the Bureau or the Commission, rather it falls well within existing precedents, policies, and guidelines issued by both the Commission and the Bureau in similar cases involving prohibited

AMG and AT&T participated in a video conference whose purpose was to discuss whether { [REDACTED] }” *Id.*

⁶³ *NAL*, *supra* note 4, at 7654, para. 12 (citing *Procedures Public Notice*, *supra* note 7, at 1478, para. 137).

⁶⁴ *Id.* at 7654, para. 12 (emphasis added).

⁶⁵ *NAL Response*, *supra* note 5, at 11.

⁶⁶ AMG attempts to deflate the significance of the communications by stating they were primarily with Jason K. Degele, the Regional Director of Sales, who managed the AMG account with AT&T for fiber transport services long before Auction 903. We find no merit or significance to this point because the relevant communications were ultimately received by officers and/or directors of AMG and AT&T and as discussed herein, the substance of the communications concerned AMG’s bids and bidding strategies within the meaning of the prohibited communications rule.

⁶⁷ 47 CFR § 1.21002(b).

⁶⁸ *NAL Response*, *supra* note 5, at 12 (quoting *Procedures Public Notice*, *supra* note 7, at 1477, para. 133).

⁶⁹ *Id.* at 12, n.44 (quoting 47 CFR § 0.311).

communications.⁷⁰ No new standards or rules regarding prohibited communications during auctions were created by the *NAL*.

20. The Bureau's primary focus and jurisdiction in this matter relates to enforcement of the auction's prohibited communications rule.⁷¹ Pursuant to section 0.201(a)(1) of the Commission's rules, the Commission may delegate authority to act in non-hearing matters and proceedings to bureau chiefs and other members of Commission staff.⁷² The Enforcement Bureau serves as the primary Commission entity responsible for enforcement of the Act, the Commission's rules, and Commission orders.⁷³ Here, the Commission's orders, public notices, and rules for Auction 903 provide the Chief of the Enforcement Bureau with sufficient existing guidelines to determine the appropriate action in response to this investigation and to enforce the Commission's rules.⁷⁴

21. AMG argues that this is a case of first impression because the *NAL* addresses the receipt of information regarding a competing applicant's bids or bidding strategies by non-officers or directors of an applicant.⁷⁵ However, the Company's argument does not adequately address the relevant portion of the *Procedures Public Notice* which provides, in part:

Applicants subject to section 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any other applicant's bids or bidding strategies. *Information received by a party related to the applicant may be deemed to have been received by the applicant under certain circumstances.* For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant, and, absent a disclosed agreement that makes the rule's exception applicable, the shared officer creates an apparent violation of the rule. Commission staff have not addressed a situation where non-officers or directors receive information regarding a competing

⁷⁰ *NAL*, *supra* note 4, at 7654, 7654-55, paras. 13, 16 & n.53; *see also* *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18641, para. 11 (EB 2004) (*Northeast Communications of Wisconsin*), order granted in part *sub nom*, *Star Wireless Order on Review*, *supra* note 27; *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (*Cascade Forfeiture Order*); *Emmis Radio License Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 18343 (EB 2002); *US West Communications, Inc.*, Notice of Apparent Liability, 14 FCC Rcd 8816 (1999), *Mercury PCS II, LLC*, Notice of Apparent Liability, 12 FCC Rcd 17970 (1997).

⁷¹ *See* *Star Wireless Order on Review*, *supra* note 27, at 8952, para. 20. At the time, *Star Wireless* referred to the restriction as the "anti-collusion" rule, but as of 2010, the Commission has since referred to the rule as concerning prohibited communications. *See* *Procedural Amends. to Comm'n Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 1776, para. 3 (2010). This change had no substantive effect on the rule nor the Commission's interpretation and application of the rule.

⁷² 47 CFR § 0.201(a)(1).

⁷³ *Id.* § 0.111.

⁷⁴ *See generally* *Procedures Public Notice*, *supra* note 7; *Qualified Bidders Public Notice*, *supra* note 11; *Auction 903 Closing Public Notice*, *supra* note 9.

⁷⁵ AMG argues that it "could not be expected to perceive that these [AT&T] individuals would have been engaged in any way with the Auction 903 activities of Cingular, of which they were neither employees nor decisionmakers, and therefore were not covered parties for purposes of the Commission's Prohibited Communications Rule." Response to Letter of Inquiry from Stephen E. Coran, Esq., Counsel to AMG Technology Investment Group, LLC, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, and Genevieve Ross, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 3 (May 8, 2019) (on file in EB-IHD-19-00028994) (AMG LOI Response). The facts of this case prove this perception to be misconceived.

applicant's bid or bidding strategies *and whether that information should be presumed to be communicated to the applicant.*⁷⁶

22. In this case, the question of whether the communication is presumed to be made to an officer or director of a competing applicant never surfaces because the communication was certainly *received* by an officer of a competing applicant. Here, the communications to Mr. Degele were transmitted to a Senior Counsel and Assistant Vice President of AT&T.⁷⁷ The Bureau did not need to make any presumptions regarding the receipt of the prohibited communications by an officer or director of AT&T, because there is no dispute that the relevant communications were in fact received by an officer of AT&T. This is demonstrated by the fact that the Senior Counsel and Assistant Vice President of AT&T disclosed the prohibited communications to the Commission, thereby alerting the Commission to the prohibited communications in the first instance.⁷⁸ For purposes of the prohibited communications rule, the fact that such communications were received by an officer or director of an applicant is sufficient to implicate the rule. AT&T's disclosure, coupled with the record the Bureau developed by its investigation,⁷⁹ demonstrates that AMG engaged in prohibited communications with another Auction 903 applicant, and the information in those communications was in fact delivered to the competing applicant. Thus, there was nothing for the Bureau to presume.⁸⁰ Moreover, whether the recipient of the communications was an officer or director of an applicant was not an outcome determinative factor. Rather, the fact that the communication actually reached an officer of a competing applicant during the Quiet Period, answered the question of whether the information was communicated to an officer of the competing applicant. Indeed, the *NAL* made clear that the Bureau relied on the disclosure and record evidence in developing the Bureau's conclusions.⁸¹

23. Additionally, while applicants for Auction 903 were directly cautioned to take special care in circumstances where officers, directors *and employees* "may receive information directly or indirectly relating to any other applicant's bids or bidding strategies," it is the conveyance of the

⁷⁶ *NAL* Response, *supra* note 5, at 12 (*quoting Procedures Public Notice*, *supra* note 7, 33 FCC Rcd at 1477, para. 133) (emphasis added).

⁷⁷ The *NAL* delineated the various prohibited communications that occurred. *See NAL*, *supra* note 4, at 7652, para. 8. These communications show that AT&T employees, Mr. Jason Degele, Regional Director of AT&T Business, and Mr. Bill Eifert, AT&T Regional Vice President of AT&T Business, were involved in discussions concerning AMG's bids and bidding strategies and these communications reached Paul Theiss, an AT&T Assistant Vice President and Senior Legal Counsel, who terminated discussions with AMG. *See* Letter from Stephen E. Coran, Esq., Counsel to AMG Technology Investment Group, LLC, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, and Genevieve Ross, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 8, 2019) (on file in EB-IHD-19-00028994), Attachment 1 – Email Correspondence. Subsequently, Cathy Carpino, AT&T Assistant Vice President and Senior Legal Counsel, reported the communications to the Commission.

⁷⁸ Specifically, on September 11, 2018, in response to the September 7, 2018 communication by AMG, an attorney for AT&T informed AMG's outside counsel that AT&T would not further discuss Auction 903-related opportunities until after the Quiet Period ended. *AT&T NAL*, *supra* note 14, at 7663, para. 8. On September 20, 2018, AT&T, through its Senior Counsel and Assistant Vice President, notified the Commission's Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff of the potential prohibited communications with AMG. *Id.* at 7664, para. 9. *See* Letter from Cathy Carpino, Senior Counsel, AT&T Services, Inc., to Margaret Weiner, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau (Sept. 20, 2018) (AT&T Disclosure Letter) (on file in EB-IHD-00028991).

⁷⁹ *NAL*, *supra* note 4, at 7652-53, para. 8.

⁸⁰ Furthermore, the paragraph AMG cites to prop up its first impression argument notes that applicants should be aware of direct and indirect receipt of information relating to another applicant's bid or bidding strategies. *See NAL* Response at 12 (*citing Procedures Public Notice*, *supra* note 7, at 1477, para. 133).

⁸¹ *NAL*, *supra* note 4, at 7653-54, 7656, paras. 12, 18; *see also* AMG LOI Response, *supra* note 75, at 9, 11-15.

communication that is prohibited.⁸² The Commission's rules provide that an applicant for a Commission auction may not convey certain information to other auction applicants during the "quiet period" which commences on the deadline for filing a short-form application and terminates on the deadline for winning bidders to submit their long form applications.⁸³ Thus, AMG's argument has no foundation given the facts of this case and Commission's existing caselaw⁸⁴ regarding prohibited communications.

B. The Facts of this Investigation Support AMG's Assessed Forfeiture.

24. AMG asserts that "there is simply no factual basis upon which the Bureau could have concluded, as a legal matter, that the broad statements made by AMG's CEO had any impact on the conduct of Auction 903."⁸⁵ AMG provides that "all the facts pertaining to the case . . . yields the definitive conclusion that there was no prohibited communication because there was no nexus between the communications and the conduct of Auction 903."⁸⁶ AMG's arguments fail to refute the main legal issue: that AMG violated section 1.21002(b) of the Commission's rules during Auction 903 by sending several e-mails to AT&T discussing AMG's Auction 903 bids, bidding strategies and bidding results, all during Auction 903's Quiet Period and section 1.21002(c) of the Commission's rules by failing to report the prohibited communications.

25. AMG does not deny that the communications took place. Neither could the Company do so because there is dated and documented evidence of this fact.⁸⁷ The standard for prohibited communications as outlined in section 1.21002(b) is not solely whether the applicant "possessed sufficient information to permit any prohibited collaboration to occur."⁸⁸ It is whether an applicant communicated with "any other applicant in any manner the substance of its own . . . bids or bidding strategies."⁸⁹ We reject AMG's claim that it conveyed no substantive information to AT&T.⁹⁰ In the context of the rule, the term "substance" does not refer to the quality of the information delivered, rather it refers to the nature of what was conveyed and whether that nature discussed the applicant's bids or bidding strategies.⁹¹ The quality of the information conveyed to AT&T is not relevant, it is the actual wording and nature of what was communicated that is significant. The nature of the information provided by AMG indeed referred to its actual bids and bidding strategies in violation of our rule against prohibited communications.

⁸² *Procedures Public Notice*, *supra* note 7, at 1477, para. 133.

⁸³ *See Nikola Engineering, Inc.*, Consent Decree, 36 FCC Rcd 12155, para. 3 (EB 2021) (*Nikola Engineering*).

⁸⁴ *See generally supra* note 27.

⁸⁵ NAL Response, *supra* note 5, at 14.

⁸⁶ *Id.* at 14.

⁸⁷ *See NAL*, *supra* note 4, at 7652-53, para. 8.

⁸⁸ NAL Response, *supra* note 5, at 14-15.

⁸⁹ 47 CFR § 1.21002(b).

⁹⁰ NAL Response, *supra* note 5, at 15.

⁹¹ *See Application of Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18630, para. 8 (2004) (*Star Wireless Forfeiture Order*) ("[I]t is the substance and timing of specific communications that are key in determining whether there has been a violation of section 1.2105(c), not the impact or claimed lack thereof on a particular auction."). *See also Star Wireless*, *supra* note 27, at 475 ("[A]s the Commission observes, general bright-line prophylactic measures, such as the anti-collusion rule, are appropriate when 'the probability of abuse in transactions between related organizations is significant enough that it is more efficient to prevent the opportunity for abuse from arising than it is to try to detect actual incidents of abuse.'" (citing *Biloxi Reg'l Med. Ctr. v. Bowen*, 835 F.2d 345, 350 (D.C. Cir. 1987); accord *Weinberger v. Salfi*, 422 U.S. 749 (1975)).

26. AMG continues to rely on unavailing arguments and asserts that all of the Company's communications occurred after AT&T decided not to bid.⁹² Despite its decision not to bid in the CAF-II auction, AT&T was still considered an applicant for Auction 903 and as such, any communications with AT&T were subject to section 1.21002(b) of the Commission's rules.⁹³

27. Lastly, AMG argues that the parties reported the prohibited communications upon becoming aware of the fact that both AMG and AT&T's affiliate had submitted Auction 903 applications.⁹⁴ Even if AMG could not discern the rather obvious link between the Cingular bidding entity and AT&T, this is not a defense, rather a demonstration of the Company's lack of diligence. Moreover, such reporting occurred outside of the five-day reporting window. The reporting requirement of section 1.21002(c) of the Commission's rules is unambiguous when it states that "[a]n applicant that makes or receives communications that may be prohibited . . . shall report such communications to the Commission staff immediately. . . ."⁹⁵ Thus, AMG violated the Commission's rules first by communicating with another auction applicant as to AMG's bids and bidding strategies during the Auction 903 Quiet Period, and then again when it failed to report its actions by the required deadline. Accordingly, the Commission's finding of a violation of section 1.21002(c) of the Commission's rules for failure to report the prohibited communications is justified.

C. AMG's Forfeiture Is Consistent with Commission Precedent.

28. We reject AMG's assertion that issuing a forfeiture in this case would be "inconsistent with all prior Commission precedent enforcing the anti-collusion rules."⁹⁶ AMG argues that auction participants were not aware of the Bureau's expansive interpretation of "bids and bidding strategies" and any prior sanctions have related "solely to the sharing of substantive, actionable information regarding bids, typically with respect to specific markets."⁹⁷

29. To support its position, AMG notes that in *Mercury PCS*, the Commission rescinded its finding of forfeiture liability because Mercury did not receive "adequate notice that the activities in which it engaged would violate the anti-collusion rule."⁹⁸ In *Mercury PCS*, the allegations surrounded Mercury's use of bid signaling—a non-verbal activity that the Commission had not previously addressed in its prohibited communication's rules but was subsequently determined by the Commission to undermine the integrity of the auction process and was therefore prohibited under the anti-collusion rule.⁹⁹ AMG asserts that the Commission cannot impose a harsher penalty in this instance where there is no evidence of an "intent to influence the auction or any actual impact on the bidding process"¹⁰⁰

30. However, comparisons between AMG's communications and *Mercury PCS* are not apt. First, unlike the non-verbal activity at issue in *Mercury PCS*, the allegations here involve verbal and

⁹² NAL Response, *supra* note 5, at 16.

⁹³ *Qualified Bidders Public Notice*, *supra* note 11, at 6178, para. 40. See also *Star Wireless Forfeiture Order*, 19 FCC Rcd at 18628, para. 4 & n.19 (observing that the Commission has repeatedly made clear that the prohibited communications rule applies to applicants regardless of whether they are qualified to bid).

⁹⁴ NAL Response, *supra* note 5, at 17.

⁹⁵ 47 CFR § 1.21002(c) (2019).

⁹⁶ NAL Response, *supra* note 5, at 17 (emphasis added).

⁹⁷ NAL Response, *supra* note 5, at 17 (citing *Star Wireless*, *supra* note 27, at 472; *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998) (*Mercury PCS*); *US WEST Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 8286, 8290-91, para. 11, and 8297, para. 30 (1998)).

⁹⁸ NAL Response, *supra* note 5, at 18 (citing *Mercury PCS*, 13 FCC Rcd at 23759-60, para. 10).

⁹⁹ *Mercury PCS*, 13 FCC Rcd at 23760, para. 11.

¹⁰⁰ NAL Response, *supra* note 5, at 18.

written activity. In *Mercury PCS*, the company used specific bid signals, coded within its bid.¹⁰¹ Second, as previously discussed and unlike in *Mercury PCS*, the Bureau did not establish a new “expansive” interpretation of the terms “bids and bidding strategies,” nor is this a case of first impression calling for the dismissal of the underlying *NAL*. The Bureau applied section 1.21002(b) of its rules as the rule is written and intended: applicants are prohibited from communicating with any other applicant *in any manner* the substance of its own, or one another’s, or any other competing applicant’s bids or bidding strategies, until after the post-auction deadline.¹⁰² Sending e-mails, an established method of “communicating,” to another applicant, which AT&T was considered, “in any manner,” in this case *via* e-mail, the “substance of its own . . . bids or bidding strategies,” {[REDACTED]} and {[REDACTED]} are statements regarding the substance of AMG’s bids. To borrow from AMG’s previous statements, the terms “bids” or “bidding strategies” and specific elements may “vary according to the subject matter of the auction.”¹⁰³ Comparing the terms from one auction to another is unrealistic and impractical given the unique nature of many of our auctions, particularly Auction 903 which awarded ongoing high-cost universal service support to auction winners. AMG’s comparison of its actions to those in *Mercury PCS* is misguided and misplaced.

31. Moreover, the Bureau’s decision in the *NAL* is consistent with prior Bureau decisions regarding prohibited communications.¹⁰⁴ In *Northeast Communications of Wisconsin*, the Bureau found that “Northeast knew or should have known that any communications with [another auction applicant] during the restricted period about either one or both of their bidding strategies would be patently inconsistent with the letter and spirit of section 1.2105(c).”¹⁰⁵ The Bureau also found that application of the prohibited communications rule is not based on an interpretation of the rule, but rather on the plain language of the rule.¹⁰⁶

32. In *Cascade Access, LLC*, the Bureau found that the a single communication (as opposed to the eight communications at issue here) from Cascade’s representative to another auction applicant stating that it had dropped out of the subject auction and was “ready to talk/meet,” (as opposed to the actual meetings that occurred here) was considered a prohibited communication about Cascade’s bidding strategy, even though the words “bids” or “bidding strategies” were not used.¹⁰⁷ In issuing its Forfeiture Order, the Bureau found that such an interpretation of the Commission’s anti-collusion rules is “both reasonable and supported by case precedent.”¹⁰⁸ As noted by the Bureau in the *Cascade Forfeiture Order*, “[i]t is axiomatic that the facts and circumstances of two cases will never be identical . . .”¹⁰⁹ The Bureau’s *NAL* rests securely in the hands of sufficient precedent to support its issuance of a forfeiture to AMG.

¹⁰¹ *Mercury PCS*, 13 FCC Rcd at 23757, para. 5.

¹⁰² 47 CFR § 1.21002(b).

¹⁰³ *NAL Response*, *supra* note 5, at 6.

¹⁰⁴ In *Router 12 Networks, LLC*, the CEO of an auction applicant posted a statement on a Facebook Group indicating it did not intend to place any bids in the auction. See *Router 12 Networks, LLC*, Consent Decree, 36 FCC Rcd 12166 (EB 2021). Similarly, in *Nikola Engineering, Inc.*, the president of an auction applicant sent an e-mail to WISPA members stating it was backing out of the auction. See *Nikola Engineering*, *supra* note 83, at 12160, para. 6.

¹⁰⁵ *Northeast Communications of Wisconsin*, *supra* note 70, at 18641, para. 11, *order granted in part sub nom, Star Wireless Order on Review*, *supra* note 27; see *NAL*, *supra* note 4, at 7655, para. 16, n.53.

¹⁰⁶ *Northeast Communications of Wisconsin*, *supra* note 70, at 18641, para. 12.

¹⁰⁷ See *Cascade Access LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350 (EB 2009).

¹⁰⁸ See *Cascade Forfeiture Order*, *supra* note 70, at 144, para. 7; see also *NAL*, *supra* note 4, at 7656, para. 16, n.54.

¹⁰⁹ *Cascade Forfeiture Order*, *supra* note 70, at 144, n.23.

33. As both these cases reflect, the Bureau's *NAL* is in line with previous cases regarding prohibited communications. While the auction format may differ from auction to auction, the prohibited communications rule must be rigorously enforced to maintain the integrity of the Commission's auctions.

D. Reduction of AMG's Forfeiture Amount Is Not Warranted.

34. In the *NAL*, the Bureau found that "this case does not merit a reduction from the \$100,000 forfeiture amount."¹¹⁰ AMG argues that a reduction in the amount of the forfeiture is "manifestly warranted" based on Commission precedent where forfeiture amounts have been reduced when a party has a history of compliance with Commission rules.¹¹¹ While citing to other prohibited communications decisions, AMG does not provide enough evidence to demonstrate why a forfeiture reduction is warranted in this instance.¹¹² Although AMG provides that it has never been cited for a violation of the Commission's rules,¹¹³ the fact remains that in the instant case, AMG violated our prohibited communications rules on eight distinct occasions and also failed to report that violation in a timely manner as further required by our rules. This was not an instance of one prohibited communication as was the case in *Cascade*, it is the culmination of several prohibited communications.¹¹⁴ As such, no reduction in the forfeiture amount is warranted.

35. The Commission's *Forfeiture Policy Statement* specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act, such as "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."¹¹⁵ We have carefully considered each of these factors, including AMG's history of compliance with the Commission's rules, and find no basis for mitigating the proposed forfeiture amount. AMG's misconduct was willful, serious, and repeated. Given the numerous reminders about prohibited communications issued to applicants in Auction 903, AMG knew or should have known that the communication in which it engaged was prohibited. It also knew or should have known to report such prohibited communications to the Commission in a timely manner.

36. *Forfeiture Amount.* AMG engaged in several prohibited communications with another applicant, during the Quiet Period for Auction 903 and failed to report the prohibited communications to the Commission within 5 business days. As both these actions were willful, we impose the \$100,000 forfeiture amount proposed in the *NAL*.¹¹⁶

¹¹⁰ NAL Response, *supra* note 5, at 20 (citing *NAL*, *supra* note 4, at 7652, para. 8).

¹¹¹ NAL Response, *supra* note 5, at 21, 22.

¹¹² AMG leans heavily on the Bureau's decision in *Cascade Wireless* where the Bureau's initial forfeiture amount was \$75,000. AMG argues that that *Cascade*'s forfeiture reduction was "presumably, although not explicitly, factored into the original forfeiture amount in the *NAL*." This is pure conjecture by AMG and provides no support to its premises for a reduction in its assessed forfeiture amount. See NAL Response, *supra* note 5, at 20, n.73.

¹¹³ NAL Response, *supra* note 5, at 21.

¹¹⁴ See *Cascade NAL*, 24 FCC Rcd at 1354, para. 14; see *NAL*, *supra* note 4, at 7655, para. 16, n.53.

¹¹⁵ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11); see also 47 CFR § 1.80(b)(2) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 503(b)(2)(B) at \$244,958 for each violation or each day of a continuing violation, up to \$2,449,575 for a violation); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

¹¹⁶ *NAL*, *supra* note 4, at 7649, para. 2.

IV. CONCLUSION

37. Based on the record before us we conclude that AMG willfully violated section 1.21002(b) and (c)¹¹⁷ of the Commission's rules and pursuant to section 503(b)(2)(E) of the Act and section 1.80 of the Commission's rules is liable for a \$100,000 forfeiture of these violations.

V. ORDERING CLAUSES

38. 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, AMG Technology Investment Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one-hundred thousand dollars (\$100,000) for willfully violating section 1.21002(b) and (c) of the Commission's rules.¹¹⁸

39. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.¹¹⁹ AMG Technology Investment Group, LLC shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, and Tram Pham, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, and Tram.Pham@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.¹²⁰

40. In order for AMG Technology Investment Group, LLC to pay the proposed forfeiture, AMG Technology Investment Group, LLC shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. 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:¹²¹

- 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 159¹²² or printed CORES form¹²³ 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

¹¹⁷ 47 CFR § 1.21002(c) (2020).

¹¹⁸ 47 U.S.C. § 503(b); 47 CFR § 1.80.

¹¹⁹ 47 CFR § 1.80.

¹²⁰ 47 U.S.C. § 504(a).

¹²¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹²² FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹²³ 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>.

(Payor FRN).¹²⁴ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/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 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.

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

42. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Stephen E. Coran, Esq., counsel for AMG Technology Investment Group, LLC, Lerman Senter PLLC, 2001 L Street, NW, Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

¹²⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: <https://www.fcc.gov>
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DA 24-372
Released: April 22, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMMENT DATES FOR MEP EVENT CODE NOTICE OF PROPOSED RULEMAKING

PS Docket Nos. 15-91, 15-94

Comment Date: May 20, 2024
Reply Comment Date: June 17, 2024

On March 14, 2024, the Federal Communications Commission adopted a Notice of Proposed Rulemaking that sought comment on a proposal to revise part 11 of its Emergency Alert System (EAS) rules to add a new EAS event code for the delivery of critical messages to the public over television and radio about missing and endangered persons (“MEP”).¹ On April 18, 2024, a summary of the *MEP Event Code NPRM* was published in the Federal Register.²

The NPRM sets deadlines for filing comments and reply comments at 30 days and 60 days after publication in the Federal Register, respectively. Accordingly, comments must be filed by **May 20, 2024**, and reply comments must be filed by **June 17, 2024**.

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

For further information, contact Theodore Marcus of the Office of Intergovernmental Affairs, Consumer and Governmental Affairs Bureau, at theodore.marcus@fcc.gov or (202) 418-2610; Dana Bowers of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at dana.bowers@fcc.gov or (202) 418-2809.

- FCC -

¹ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Notice of proposed Rulemaking, PS Docket Nos. 15-91, 15-94, FCC 24-30, (rel. Mar. 15, 2024) (*MEP Event Code NPRM*).

² Federal Communications Commission, *The Emergency Alert System and Wireless Emergency Alerts*, Proposed Rule, 89 Fed. Reg. 27699 (Apr. 18, 2024).



Federal Communications Commission
Washington, D.C. 20554

April 22, 2024

DA 24-373

In Reply Refer to:

1800B3-ARR

Released: April 22, 2024

Tahoma Preservation
c/o Tim Stone, President
P.O. Box 111747
Tacoma, WA 98411
tahomapreservation@outlook.com

Re: **Tahoma Preservation**
New LPFM, Tacoma, Washington
Facility ID No. 787979
Application File No. 0000231404

Petition for Reconsideration

Dear Applicant:

We have before us a Petition for Reconsideration (Petition)¹ filed by Tahoma Preservation (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Tacoma, Washington.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.³ On January 19, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)⁴ of the Commission's rules (Rules), with respect to the second-adjacent channel licenses of stations KQMV(FM), Bellevue, Washington, and KJR-FM, Seattle, Washington, and noted that an amendment was not permitted under section 73.870(c) of the Rules.⁵

¹ Pleading File No. 0000238844 (filed Feb. 12, 2024).

² Application File No. 0000231404 (filed Dec. 6, 2023).

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

⁴ See 47 CFR § 73.807(a).

⁵ See *Broadcast Actions*, Public Notice, Report No. PN-2-240119-01 (MB Jan. 19, 2024) (citing 47 CFR § 73.870(c)). See also Application File Nos. 0000120175 and BLH-20010206AAA (license applications for KQMV(FM) and KJR-FM). On January 4, 2024, Petitioner attempted to file an amendment to the Application. The Bureau denied this amendment on January 5, 2024, because it was impermissibly filed during a filing freeze on amendments to applications submitted in the 2023 LPFM Filing Window. See *Media Bureau Announces Close of LPFM New Station Filing Window and Temporary Filing Freeze on Amendments to Applications Submitted in the*

In the Petition, Petitioner seeks reinstatement of the Application and claims that, relying on FCC staff, it thought that the Commission's Licensing and Management System (LMS) would automatically take into account second-adjacent stations when determining the power of the proposed station and LMS would automatically adjust the proposed station's parameters based on those second-adjacent stations. Petitioner thus assumed no second-adjacent channel waiver request was needed.⁶

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁷ Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet the second-adjacent channel spacing requirements, as outlined in section 73.807(a).⁸ Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.⁹ Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.¹⁰ Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."¹¹

Although section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorizes the Commission to waive second-adjacent channel spacing requirements, an LPFM applicant must specifically request the waiver and demonstrate that its proposed LPFM facilities "will not result in interference to any authorized radio service."¹² The Bureau explicitly cautioned LPFM applicants that it will dismiss any application that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, supported by the requisite engineering exhibit, and that a dismissed applicant will *not* be permitted to seek *nunc pro tunc* reinstatement of its application.¹³

December 2023 Filing Window, Public Notice, DA 23-1165 (MB Dec. 15, 2023) (announcing filing freeze on amendments until January 31, 2024).

⁶ Petition at 1.

⁷ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

⁸ 47 CFR § 73.807.

⁹ See *id.* § 73.807(a)(1).

¹⁰ See *id.* § 73.870(c).

¹¹ See *Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR § 73.870(c)); see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

¹² Pub. L. No. 111-371, 124 Stat. 4072 (2011); see also 47 CFR § 73.807(e) (outlining LPFM applicant requirements for a second-adjacent channel spacing waiver).

¹³ See *Procedures Public Notice* at 4; see also *Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (*Clifford Brown*) (affirming dismissal of application, without ability to amend and seek

Here, the Bureau correctly dismissed the Application because Petitioner failed to meet the minimum distance spacing requirements of section 73.807(a)(1) with respect to second-adjacent channel stations KQMV(FM) and KJR(FM), and failed to submit a second-adjacent channel waiver request and supporting exhibit. The Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.¹⁴ Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission's dismissal of their applications would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote and be unfair to the many applicants who fully complied with the rules and filing requirements. It is, therefore, contrary to the public interest.¹⁵ Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Reliance on Staff Advice. Finally, we reject Petitioner's claim that its failure to file the required request for a second-adjacent channel waiver is due to FCC staff advice. The Petition simply states, "IT WAS OUR UNDERSTANDING FROM THE FCC STAFF", but provides no names of FCC staff involved, no dates for conversations with FCC staff or copies of emails with FCC's staff. Thus, the Petition's claims of advice from FCC staff are not credible. Moreover, the Commission has consistently held that parties relying on staff advice do so at their own risk.¹⁶ Applicants are required to comply with the Commission's rules and procedures, which were clearly outlined by the *Procedures Public Notice*.¹⁷

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)).

¹⁴ See *Christian Charities*, 30 FCC Rcd at 10549, para. 5 (2015) (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014); *Clifford Brown*, 29 FCC Rcd 13258).

¹⁵ See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) ("In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.").

¹⁶ See, e.g., *Texas Media Group*, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852, para. 8 (1990) ("It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff."), *aff'd sub nom. Malkan FM Assocs. v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991); *Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637, para. 42 (1995) ("The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.").

¹⁷ See *Procedures Public Notice* at 3 (explaining that an application that fails to comply with the second-adjacent channel spacing requirements, without requesting a waiver, will be dismissed with no opportunity to amend); see also *Marketing Strategy Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not 'claim ignorance of the law as a defense'" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Tahoma Preservation, on February 12, 2024 (Pleading File No. 0000238844) **IS DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 24-374
April 22, 2024

OFFICE OF ECONOMICS AND ANALYTICS SEEKS COMMENT ON THE STATE OF COMPETITION IN THE COMMUNICATIONS MARKETPLACE

GN Docket No. 24-119

Comments Due: June 6, 2024
Reply Comments Due: July 8, 2024

I. INTRODUCTION

1. In the last quarter of every even numbered year, the Commission must publish a *Communications Marketplace Report* that, among other things, “assess[es] the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service (as defined in section 332 of the Communications Act of 1934, as amended (the Act)), multichannel video programming distributors (as defined in section 602 of the Act), broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services.”¹ In assessing the state of competition, the Commission must consider all forms of competition, including “the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services.”² The Commission must also “assess whether laws, regulations, regulatory practices (whether those of the Federal Government, States, political subdivisions of States, Indian [T]ribes or [T]ribal organizations (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5304)), or foreign governments), or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services.”³

¹ 47 U.S.C. § 163(a), (b)(1) (with revisions to citations in parentheticals); *see also* Section 401 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act), Pub. L. No. 115-141, Div. P, 132 Stat. 1080, 1087 (codified at 47 U.S.C. § 163).

² 47 U.S.C. § 163(d)(1).

³ 47 U.S.C. § 163(b)(3). In assessing the state of competition under subsection (b)(1) and regulatory barriers under subsection (b)(3), the Commission must also “consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with the national policy under section 257(b).” 47 U.S.C. § 163(d)(3). The Commission shall include information comparing the extent of broadband service capability (including data transmission speeds and price for broadband service capability) in a total of 75 communities in at least 25 countries abroad for each of the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers as discussed in section 103(b)(1) of the Broadband Data Improvement Act as part of the Communications Marketplace Report. *See* RAY BAUM’S Act § 402(c), 132 Stat. at 1089; 47 U.S.C. § 1303(b)(1).

2. The Commission adopted the first *Communications Marketplace Report (2018 Communications Marketplace Report)* on December 12, 2018, which reflected the state of the communications marketplace primarily as of year-end 2017.⁴ The Commission adopted the most recent *Communications Marketplace Report (2022 Communications Marketplace Report)* on December 30, 2022, which reflected the state of the communications marketplace primarily as of year-end 2021.⁵

3. This *Public Notice* seeks public input to inform the Commission's required assessment of the state of competition in the communications marketplace in its upcoming *Communications Marketplace Report (2024 Communications Marketplace Report)* to Congress. Specifically, we seek data, information, and comment on a wide range of issues relevant to the state of competition in the communications marketplace as a whole. We request that commenters submit information, data, and statistics for 2022 and 2023, as well as information on any notable trends and developments that have occurred during early 2024. Industry stakeholders, the public, and all other interested parties are encouraged to submit information, comments, and analyses. To facilitate analysis of competitive trends, parties should submit relevant current and historic data that are comparable over time.

II. COMPETITION AND SERVICE AVAILABILITY FOR FIXED BROADBAND SERVICES

4. Consumers access fixed broadband services through a variety of technologies, including cable, fiber to the premises, Digital Subscriber Line (DSL), terrestrial fixed wireless, and satellite. These services differ in their availability and in various characteristics such as price, speed, and latency.⁶ We request comment on the criteria or metrics that could be used to evaluate the state of competition for those services and the state of broadband service availability. Comments and information also are sought on industry data, competitive dynamics, and trending factors in the provision of fixed broadband services. We request comment on the extent to which differences in service characteristics, e.g., latency, upload and download speed, and data allowances, affect consumers' ability to use the services effectively, and whether these differences significantly affect competition.

5. We also request comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to facilities-based competitive entry into the marketplace for the provision of fixed services, or to the competitive expansion of existing facilities-based service providers. Further, we seek information on the extent to which any such laws, regulations, or marketplace practices affect entry conditions for entrepreneurs and other small businesses in the provision of facilities-based fixed broadband services.⁷

6. In March 2020, Congress passed the Broadband DATA Act,⁸ which required the Commission, among other things, to collect biannual data relating to the availability and quality of service of fixed and mobile broadband Internet access service for the Commission to create broadband coverage maps.⁹ Accordingly, starting on June 30, 2022, the Commission began collecting fixed and mobile broadband availability data as part of its new Broadband Data Collection (BDC), and in December 2022,

⁴ *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, 33 FCC Rcd 12558 (2018) (*2018 Communications Marketplace Report*).

⁵ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514 (2022) (*2022 Communications Marketplace Report*).

⁶ Latency refers to the time it takes for a data packet to travel back and forth through the network.

⁷ 47 U.S.C. § 163(d)(3).

⁸ 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).

⁹ 47 U.S.C. § 642(a)(1)(A).

the Commission sunset the collection of broadband deployment data through the FCC Form 477.¹⁰ The Commission completed its fourth collection of BDC data on March 1, 2024, reflecting fixed and mobile service availability as of December 31, 2023.¹¹ In the *2024 Communications Marketplace Report*, we propose to use BDC data in our analysis of December 2023 broadband service availability¹² and to rely on both BDC and FCC Form 477 data for historical trends, and we seek comment on this approach.¹³ We seek comment on how we should account for changes to the underlying source data in tables and graphs that span both FCC Form 477 and BDC data. The BDC represents significant improvements as compared to FCC Form 477 broadband deployment data through the use of more precise location-by-location fixed data, mobile data based on standardized parameters, and a public challenge process. What data sources beyond the BDC should the Commission consider in evaluating competition or deployment of fixed services, including any potential deployment related to the Infrastructure Investment and Jobs Act?¹⁴

7. Commenters are invited to submit data and information on, for example:

- The number of fixed broadband subscribers/connections at the national level disaggregated by technology, speed, and service provider
- Trends in connectivity gaps in service availability, speeds, and quality of fixed broadband services across geographic areas (e.g., rural, urban, and Tribal)
- Competition in the provision of fixed broadband services
- Information on innovations that have shaped and will shape fixed connectivity
- The extent of competition between fixed broadband providers that rely on different types of transmission technologies, such as fiber, cable, DSL, fixed wireless, and satellite, and the degree to which consumers consider or treat these services as substitutes
- How to incorporate fixed wireless or satellite services in our analysis of fixed broadband service availability, and the reasons why
- Whether we can evaluate competition between services by evaluating the percentage of potential subscribers offered the service that actually subscribe to that service

¹⁰ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, 37 FCC Rcd 14957 (2022) (*2022 Form 477 Order*) (sunsetting the collection of broadband deployment data through FCC Form 477). The Commission clarified that it will continue to collect broadband and voice subscription data using the FCC Form 477, but filers will submit their data through the BDC system. *Id.* at 14957, para. 1.

¹¹ BDC filings due March 1, 2024 include—among other things—broadband “service availability” data as of December 1, 2023. The data on fixed broadband service availability show locations where a provider currently has a customer or where the provider is capable of performing a “standard broadband installation” (that is, can complete a routine installation within 10 business days after a service request is initiated with no charges or delays attributable to the extension of the provider’s network). See Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data (Mar. 30, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec> and 47 CFR § 1.7004.

¹² Consistent with the *2024 Section 706 Report*, we use the term “service availability” to refer to broadband “availability” as reported in the BDC. *2024 Section 706 Report*, FCC 24-27, at 27-28, para. 52 n. 203 (Mar. 18, 2024) (*2024 Section 706 Report*). As the Commission explained in the *2024 Section 706 Report*, the BDC does not currently factor in all of the universal service goals that the Commission analyzed in the *2024 Communications Marketplace Report*. *Id.*; see also section IX *infra* (seeking comment on data related to universal service goals).

¹³ FCC BDC data were used in the Commission’s analysis of December 2022 broadband service availability as presented in the *2024 Section 706 Report*, while FCC Form 477 data for December 2018 through December 2021 were used for historical trend purposes. *2024 Section 706 Report*, FCC 24-27, at 27-28, para. 52.

¹⁴ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

- The extent to which there are quality of service differences between technologies and if consumers consider these differences to be significant
- How quality of service should be measured
- The factors that determine consumer demand for fixed broadband services
- Data caps and the provision and consumption of fixed broadband services
- Trends in subscriber churn
- Trends in data traffic and consumer data usage
- Price levels and trends, as well as trends in service offerings
- Revenue metrics—including total revenue and average revenue per unit—for the industry as a whole and for individual providers
- Capital investment, innovation, and technological upgrades
- Network quality and speeds of service, including latency and outages
- The role of entry conditions (federal, state, and/or local) in fixed broadband services, including for entrepreneurs and other small businesses
- Recent entry into and exit from the marketplace
- The extent of competition between mobile and fixed (i.e., wireline, satellite, and fixed wireless) providers of voice, broadband, and video services
- The status of competition among broadband providers in multiple tenant environments
- The effects of early termination fees on consumer contracts and the consumer's ability to switch providers

III. COMPETITION AND SERVICE AVAILABILITY FOR MOBILE WIRELESS SERVICES

8. We request comment and information that could be used to evaluate the state of competition and competitive dynamics within the marketplace for mobile wireless services. In addition to the nationwide facilities-based mobile wireless service providers, the mobile wireless marketplace consists of numerous regional and local facilities-based providers, mobile virtual network operators (MVNOs) which purchase mobile wireless services wholesale, cable providers that rely on a hybrid wholesale/hotspot arrangement to offer service, and mobile satellite providers that primarily focus on niche services, such as tracking services for aircraft and ships and operations in remote locations.

9. Comments and information are sought on industry data, competitive dynamics, and trending factors in the mobile wireless marketplace, including, but not limited to, factors that determine demand for mobile wireless services, the number of connections, pricing, spectrum holdings, network coverage, and the development of innovative technologies. We ask commenters to consider not only how these factors affect direct consumption of mobile wireless services, but also broader implications, such as the current and prospective impact of mobile wireless services on the cost and means of doing business and on innovation in various industries. We also request comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to competitive entry into the mobile wireless marketplace, or to the competitive expansion of existing providers. Further, we seek information on the extent to which any such laws, regulations, or marketplace practices affect entry conditions for entrepreneurs and other small businesses in the mobile wireless marketplace.

10. We also note that since the release of the *2022 Communications Marketplace Report*, mobile wireless service providers have continued to deploy 5G-NR on a wide scale.¹⁵ Similarly to our proposed analysis for fixed broadband services, we propose to use December 2023 BDC data in our

¹⁵ See, e.g., AT&T, *AT&T 5G. Fast. Reliable. Secure.*, <https://www.att.com/5g/consumer/> (last visited Apr. 22, 2024); T-Mobile, *Experience America's largest & fastest 5G network.*, <https://www.t-mobile.com/coverage/4g-lte-5g-networks> (last visited Apr. 22, 2024); Verizon, *The network America relies on*, <https://www.verizon.com/5g/> (last visited Apr. 22, 2024).

analysis of mobile broadband service availability¹⁶ and to rely on both BDC and FCC Form 477 data for historical trends, and we seek comment on this approach.¹⁷ In addition, are there alternative data sources on mobile broadband service availability that we should consider?

11. Commenters are invited to submit data and information on, for example:

- The number of mobile wireless subscribers/connections and churn at the national level and by technology, speed, and provider
- Trends in connectivity gaps in service availability, speed, and quality of mobile wireless broadband services across geographic areas (e.g., rural, urban, and Tribal)
- Trends in mobile data traffic and consumer data usage
- Price levels and trends as well as trends in service offerings
- Revenue metrics—including total revenue and average revenue per unit—for the industry as a whole and for individual providers
- Capital investment and technological upgrades
- Network quality, performance, and speeds of service
- Spectrum holdings, access to spectrum, spectrum usage, spectrum aggregation including any considerations for spectrum aggregation at the initial licensing stage, spectrum auctions and any effects on the state of competition due to the ongoing lapse of the Commission’s spectrum auction authority,¹⁸ and spectrum sharing
- The role of infrastructure in the mobile wireless marketplace, including any construction and/or deployment of wireless broadband infrastructure related to the Infrastructure Investment and Jobs Act¹⁹ or otherwise
- The extent of competition in the wireless infrastructure marketplace, including opportunities for—and impacts of—new entrants, multi-vendor networks, and hybrid networks (e.g., satellite-terrestrial networks)
- Measurements of mobile coverage, nationwide and disaggregated by urban areas, rural areas, and Tribal lands, including discussion of any methodological issues identified

¹⁶ As noted above, BDC data as of December 31, 2023, include—among other data—mobile broadband “service availability” data. Facilities-based providers of mobile broadband internet access service and/or voice service are required to submit data about where they make mobile service available, including coverage maps for 3G, 4G LTE, 5G-NR, and voice technologies. These coverage maps are based on propagation modeling, and the propagation modeling must be based on the parameters specified in the Broadband DATA Act and adopted by the Commission. See Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data (Mar. 30, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec> and 47 CFR § 1.7004.

¹⁷ BDC data were used in the Commission’s analysis of December 2022 broadband service availability as presented in the *2024 Section 706 Report*, while FCC Form 477 data for December 2018 through December 2021 were used for historical trend purposes. See *2024 Section 706 Report*, FCC 24-27, at 27-28, para. 52.

¹⁸ The Commission’s authority to issue licenses pursuant to a system of competitive bidding expired on March 9, 2023. See 47 USC 309(j)(11) (“The authority of the Commission to grant a license or permit under this subsection shall expire March 9, 2023, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021.”). Since the lapse of general authority on March 9, 2023, Congress has provided a 90-day window for the Commission to grant licenses “in the band of frequencies between 2496 megahertz and 2690 megahertz, inclusive” not granted prior to the 5G SALE Act and applied for based on competitive bidding held prior to March 9, 2023. See 5G Spectrum Authority Licensing Enforcement Act (5G SALE Act), P.L. 118-27, 137 Stat. 132 (2023). Congress has not otherwise changed the Commission’s auction authority since it lapsed.

¹⁹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

- Information on innovations that have shaped and will shape mobile connectivity, which may include topics such as but not limited to 5G, Open radio access networks (Open RAN), Internet of Things (IoT), dynamic spectrum sharing, the use of artificial intelligence (AI) in wireless networks, and other developing or new technologies
- The number and types of mobile applications that have been launched and downloaded by consumers as well as innovations in the types of applications that are available as a result of 5G
- The mix and utilization of connected devices such as smartphones, wearables, and connected cars across the population
- The impact of innovation on device availability and usage, especially for individuals with disabilities and lower income individuals
- The impact of handset unlocking policies on mobile wireless competition
- The role of entry conditions (federal, state, and/or local) in mobile wireless competition, including for entrepreneurs and other small businesses
- Recent entry into and exit from the marketplace
- The criteria, metrics, or methodologies that might be used to evaluate potential competition between mobile wireless and fixed broadband services, including the extent to which these services are viewed by consumers as substitutes or complements
- The extent to which survey data could help inform our evaluation of substitutability, including a discussion of reliable data sources
- The interaction of mobile wireless technology with other sectors of the economy, including how developments and needs in other sectors affect mobile wireless technology innovation
- The effects of early termination fees on consumer contracts and the consumer's ability to switch providers

IV. COMPETITION IN THE VOICE MARKETPLACE

12. We request comment on the criteria or metrics that could be used to evaluate the state of competition in the voice marketplace.²⁰ Comments and information also are sought on industry data, competitive dynamics, and trending factors in the provision of voice services. We also request comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to facilities-based competitive entry into the marketplace for the provision of voice services. Further, we seek information on the extent to which any such laws, regulations, or marketplace practices affect entry conditions for entrepreneurs and other small businesses in the provision of voice services. We also request comment on the criteria, metrics, or methodologies that might be used to evaluate potential competition between mobile wireless and fixed voice services, including the extent to which these services are viewed by consumers as substitutes or complements. Finally, we seek information on the proportion of households that do not subscribe to either fixed or mobile voice, as well as any effects of cross-platform messaging applications.

V. COMPETITION IN THE VIDEO MARKETPLACE

13. We request comment on the issues and trends affecting competition in the market to deliver video programming services.²¹ We plan to use an analytical framework similar to that employed in the *2022 Communications Marketplace Report*, which categorizes entities that deliver video services into three primary groups—multichannel video programming distributors (MVPDs), online video

²⁰ In the *2024 Communications Marketplace Report*, we plan to use data submitted into the BDC in our analysis of fixed and mobile voice.

²¹ Video programming is defined as “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.” 47 U.S.C. § 522(20); *see also* 47 CFR § 76.5(ff).

distributors (OVDs), and broadcast television stations.²² MVPDs deliver video programming to consumers in the form of channel packages, which typically include linear channels from cable networks and retransmitted broadcast television stations, as well as video-on-demand (VOD) content.²³ OVDs deliver video content to consumers via the Internet using a variety of business models, including advertising-supported models, subscription models, transactional models where consumers pay for programming on a per-program basis, and virtual multichannel video programming services that deliver channel packages similar to traditional MVPDs.²⁴ Broadcast television stations offer linear video programming channels over-the-air to households that receive this programming using a television set connected to an antenna.²⁵

14. We seek comment on both intragroup competition (i.e., competition within a group) and intergroup competition (i.e., competition between groups) in the video marketplace. Specifically, we seek information on the business models and competitive strategies employed by video service providers. We also request comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to competitive entry into the video marketplace, or to the competitive expansion of existing providers. Further, we seek information on the extent to which any such laws, regulations, or marketplace practices affect entry conditions for entrepreneurs and other small businesses in the video marketplace.

15. Commenters are invited to provide data and information on, for example:

- Video service pricing
- Video service offerings and features (e.g., original or exclusive programming, number or frequency of ads shown, device compatibility)
- Trends in video subscription and usage patterns including household subscription to or usage of multiple video services
- Vertical integration of programming ownership and distribution and any implications for competition and programming diversity
- Technological developments (e.g., deployment of ATSC 3.0 service, geo-targeted broadcasting)
- The provision of video programming accessible to people with disabilities
- The provision of diverse video programming
- Recent entry into and exit from the marketplace
- Consolidation and fragmentation in the marketplace
- The status of competition among video providers in multiple tenant environments
- The effects of early termination fees on consumer contracts and the consumer's ability to switch providers
- Operating and financial statistics including subscriptions, subscription revenue, advertising revenue, retransmission consent fee revenue, and any other sources of revenue
- Data and comments that will help the Commission analyze how the ongoing evolution of the video programming market affects competition in the related market for set-top boxes and devices, including the extent to which consumer choice for devices to access MVPD content remains relevant

²² 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15652, para. 212.

²³ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15652, para. 213.

²⁴ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15653, para. 214.

²⁵ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15653, para. 215.

VI. COMPETITION IN THE AUDIO MARKETPLACE

16. We request comment on the criteria or metrics that could be used to evaluate the state of competition in the audio programming marketplace. We plan to use an analytical framework similar to that employed in the *2022 Communications Marketplace Report*, which categorizes entities that deliver audio programming into three groups—terrestrial broadcast radio stations, satellite radio, and online audio providers.²⁶ Terrestrial radio broadcasters use terrestrial radio stations licensed by the Commission to broadcast audio content over the air to consumers who use radios to receive the stations' programming.²⁷ Satellite radio uses satellite technology to offer subscription-based audio programming to consumers.²⁸ Online audio providers use the Internet to deliver a variety of audio services to listeners including linear audio channels and access to music libraries and podcasts.²⁹ We seek comment on using this approach.

17. We seek comment on both intragroup competition (i.e., competition within a group) and intergroup competition (i.e., competition between groups) in the audio marketplace. Specifically, we seek comment and information on industry data, competitive dynamics, and trending factors. We also request comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to competitive entry into the audio marketplace, or to the competitive expansion of existing providers. Further, information is sought on the extent to which any such laws, regulations, or marketplace practices affect entry conditions for entrepreneurs and other small businesses in the audio marketplace.

18. Commenters are invited to submit data and information related to participants in the marketplace for the delivery of audio programming, including, but not limited to, terrestrial radio broadcasters (i.e., AM and FM radio stations), satellite radio providers, and entities that provide audio programming over the Internet and to mobile devices. We seek information on, for example:

- Industry participants in the provision of audio programming services
- Trends in service offerings, pricing, and consumer behavior
- The provision of audio programming accessible to people with disabilities
- The provision of diverse audio programming
- Ratings, subscribership, and revenue information, for the marketplace as a whole and for individual industry participants
- Capital investment, innovation, and the deployment of advanced technology
- The requirements for entry into the marketplace
- Recent entry into and exit from the marketplace

VII. COMPETITION IN SATELLITE COMMUNICATIONS SERVICES

19. Satellites function as relay stations in space that receive signals from an earth station and then re-transmit the signal to a distant point located often thousands of miles from the point of signal origination.³⁰ In broad terms, satellites operate in either a geostationary (GSO) or non-geostationary

²⁶ These three categories do not include music channels on cable and satellite TV or recorded music, such as CDs. *2022 Communications Marketplace Report*, 37 FCC Rcd at 15689, para. 295 & n.872.

²⁷ *2022 Communications Marketplace Report*, 37 FCC Rcd at 15689, para. 296.

²⁸ *2022 Communications Marketplace Report*, 37 FCC Rcd at 15689, para. 297.

²⁹ *2022 Communications Marketplace Report*, 37 FCC Rcd at 15690, para. 298.

³⁰ An earth station is a station located either on the Earth's surface or within the major portion of the Earth's atmosphere and intended for communication: (1) with one or more space stations; or (2) with one or more stations of the same kind by means of one or more reflecting satellites or other objects in space. 47 CFR § 25.103 (*Earth station*).

(NGSO) orbit.³¹ In recent years, the Commission has received and granted an unprecedented number of applications for NGSO space station licenses, including for NGSO fixed-satellite service (FSS) systems.³² Orbiting closer to the Earth than a traditional GSO satellite, low- and medium-orbit NGSO FSS satellite constellations are capable of providing broadband services to industry, enterprise, and individual customers with lower latency and faster speeds than were previously available via satellite.³³ The Commission has also received and granted a number of applications from GSO operators proposing the next generation of very high throughput satellites. These satellites are also capable of providing broadband to industry, enterprise, and residential customers at much faster speeds than the traditional GSO satellites.

20. We seek data, information, and comment on the delivery of voice, video, audio, and data services by providers of satellite communications, particularly services that may not be encompassed by the remaining product markets discussed in this notice. We request comment on the criteria or metrics that could be used for analysis of competition among satellite communications providers, as well as comment and information on industry data, competitive dynamics, and trending factors.

21. Commenters are invited to submit data and information on, for example:

- Retail and wholesale communications services that are provided by satellite communications providers
- The types of buyers of satellite communications services
- The requirements for entry into the marketplace and significant barriers to such entry
- Recent and prospective entry into and exit from the marketplace
- Orbital and spectrum resources, operators' access to spectrum, spectrum usage, and spectrum aggregation
- Price levels as well as trends in service offerings, pricing, and consumer behavior
- Investment, subscribership, and financial indicators (such as revenues or profitability)
- Network quality and speeds of service
- Service availability, access availability in the United States, and limitations on accessing satellite communications by customers
- The comparability of satellite broadband and other communications services to similar terrestrial services in capacity, quality, and price
- Information on innovations that have shaped and will shape the market
- The extent of competition as it relates to satellite communications, including the effects of intermodal competition with other fixed or mobile providers of communications services
- The ability of satellite communications services to provide service to underserved groups that otherwise might lack access to broadband service
- How factors such as satellite launch costs and the availability of resources such as launch facilities, ground infrastructure, spectrum, and orbital locations affect the marketplace for satellite communications services
- The impact of entry by NGSO FSS low-earth orbit licensees and market access grantees, as well as the new high-capacity GSO throughput satellites, on competition and broadband service availability, including prospective effects on Universal Service Fund programs and efforts to bridge the connectivity gap

³¹ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15637, para. 176.

³² *Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems et al.*, IB Docket No. 21-456, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-29, 38 FCC Rcd 3699, at para. 2 (Apr. 21, 2023).

³³ *Id.*

VIII. INTERNATIONAL BROADBAND DATA

22. As part of its assessment in the *Communications Marketplace Report*, the Commission must by statute include “information comparing the extent of broadband service capability (including data transmission speeds and price for broadband service capability) in a total of 75 communities in at least 25 countries abroad for each of the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers.”³⁴ The Commission must choose international communities comparable to various communities in the United States with respect to population size, population density, topography, and demographic profile.³⁵ The Commission is required to include a “geographically diverse selection of countries” and “communities including the capital cities of such countries.”³⁶ The Commission must “identify relevant similarities and differences in each community, including their market structures, the number of competitors, the number of facilities-based providers, the types of technologies deployed by such providers, the applications and services those technologies enable, the regulatory model under which broadband service capability is provided, the types of applications and services used, business and residential use of such services, and other media available to consumers.”³⁷

23. We seek data, information, and comment on comparative international information on broadband services that can inform this assessment. Commenters are invited to submit data and information on, for example:

- International fixed and mobile broadband speed and quality of service
- International fixed and mobile broadband pricing
- International fixed and mobile broadband service availability by technology
- Additional comparison countries beyond the Organization for Economic Cooperation and Development (OECD) countries
- Fixed and mobile broadband service availability data for non-European OECD countries, which may be comparable to FCC BDC data for the United States and the European Commission’s coverage data for the European Union³⁸
- Alternative fixed and mobile broadband pricing datasets that we should consider for analysis
- Potential methodologies that could be used to compare data transmission speeds and prices for broadband service across communities and countries

IX. BRIDGING THE DIGITAL DIVIDE

24. We invite comment on affordability, adoption, and equitable access to broadband throughout the United States.³⁹ Commenters are invited to submit data and information on, for example:

³⁴ 47 U.S.C. § 1303(b)(1).

³⁵ *Id.* § 1303(b)(2).

³⁶ *Id.*

³⁷ *Id.* § 1303(b)(3).

³⁸ The previous report included European coverage data based on the *2021 Broadband Coverage in Europe Report*, which discusses the 28 member countries of the E.U., as well as Iceland, Norway, and Switzerland. European Commission, *Broadband Coverage in Europe 2021* (2022), <https://digitalstrategy.ec.europa.eu/en/library/broadband-coverage-europe-2021>.

³⁹ *Report on the Future of the Universal Service Fund*, 37 FCC Rcd 10041, 10046, para. 12 (2022) (*Future of USF Report*). In the *Future of USF Report*, the Commission adopted the universal service goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States as the Commission’s universal service goals for broadband. The Commission defined these goals in order to “improv[e] our effectiveness in achieving the universal goals for broadband.” *Id.*

- Changes and trends in affordability
- Status and trends of connectivity-related gaps (e.g., variation in fixed and mobile broadband connectivity, homework gap, uneven access to healthcare services), speeds, and quality of service across geographic areas, demographics and income levels, and the impact of government programs, including the Emergency Broadband Benefit (EBB), Affordable Connectivity Program (ACP), and Emergency Connectivity Fund (ECF), on these gaps
- The contribution of public sector subsidies and private sector initiatives to improve affordability
- The impact of universal service programs on affordability
- Methodologies and data sources to measure affordability
- Methodologies and data sources to measure adoption
- Interaction between adoption and affordability
- Interaction of equitable access and various subsidy programs, specifically those focused on rural, low income, and Tribal areas
- Information on data and methodologies that could assist in identifying and quantifying connectivity-related gaps, speeds, and quality of service across geographic areas, demographics, and income levels
- Cost and attributes of broadband plans that consumers purchase
- Cost of broadband services for consumers after discounts and subsidies
- The impact of the wind-down of the ACP on churn, adoption rates, and other market indicators⁴⁰

25. As part of the Commission's continuing effort to advance digital equity for all,⁴¹ including low-income persons, people of color, persons with disabilities, persons who live in rural areas or Tribal lands, and others who are or have been historically underserved, marginalized, or adversely affected by inequality, we invite comment on any issues of diversity, equity,⁴² inclusion, and accessibility in the communications marketplace.

⁴⁰ Affordable Connectivity Program, WC Docket No. 21-450, Order, DA 24-23, at 11, paras. 28-29 (WCB Jan. 11, 2024) (ACP Wind-Down Order); see also USAC, ACP Enrollment Freeze Begins February 8 (Feb. 5, 2024), <https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-Enrollment-Freeze-Begins-February-8.pdf>; USAC, ACP Newsletter - January 2024 (Jan. 30, 2024), <https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-Newsletter-January-2024.pdf>.

⁴¹ Section 1 of the Communications Act of 1934, as amended, provides that the Commission "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make 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, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151. See also *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-100, at 2, para. 2 (Nov. 20, 2023) (adopting rules pursuant to section 60506 of the Infrastructure Investment and Jobs Act to establish a framework to facilitate equal access to broadband Internet access service).

⁴² 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 Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

X. PROCEDURAL MATTERS

26. Interested parties may file comments on or before June 6, 2024, and reply comments on or before July 8, 2024, in GN Docket No. 24-119. Comments may be filed electronically using the Commission's Electronic Comment Filing System (ECFS) or on paper.

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

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, D.C., 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

28. 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).

29. For further information, contact Catherine Mataves, Office of Economics and Analytics, (202) 391-6272 or Catherine.Mataves@fcc.gov, or Judith Dempsey, Economic Analysis Division, Office of Economics and Analytics, (202) 418-1861 or Judith.Dempsey@fcc.gov.

– FCC –



PUBLIC NOTICE

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DA 24-375

Released: April 22, 2024

OET ANNOUNCES PERMIT-BUT-DISCLOSE EX PARTE STATUS FOR EXPERIMENTAL LICENSE WW9XPI

By the Chief, Office of Engineering and Technology:

The Office of Engineering and Technology has designated matters pertaining to file number 0661-EX-ST-2023 as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective April 22, 2024. On April 9, 2024, Space Exploration Holdings, LLC (SpaceX) filed an application for experimental Special Temporary Authority (STA) to expand experimental authority already granted to SpaceX for testing its satellites' capabilities to provide Supplemental Coverage from Space. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues associated with SpaceX's operations.¹

-OET-

¹ See 47 CFR § 1.1200(a)

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

In the Matter of	)	
	)	
Kuiper Systems LLC	)	ICFS File Nos.:
	)	SAT-MOD-20210806-00095
Request for Modification of the Authorization for	)	SAT-AMD-20230329-00067
the Kuiper NGSO Satellite System	)	
	)	Call Sign: S3051
	)	

ORDER AND AUTHORIZATION

Adopted: April 22, 2024

Released: April 22, 2024

By the Chief, Space Bureau:

I. INTRODUCTION

1. In this Order and Authorization (Order), we grant the application, as amended, of Kuiper Systems LLC (Kuiper) for modification of the authorization for its constellation of non-geostationary orbit (NGSO) fixed-satellite service (FSS) satellites operating in the Ka-band.¹ Specifically, we grant Kuiper's request for a partial waiver of section 25.146(c) of the Commission's rules and accordingly modify the condition on Kuiper's authorization² that requires Kuiper to obtain a favorable or qualified favorable finding from the International Telecommunications Union (ITU) regarding compliance with applicable equivalent power flux density (EPFD) limits, permitting Kuiper to begin operations prior to receiving a favorable or qualified favorable finding from the ITU that takes into account the joint effect of its multiple ITU filings.³ Our action in this modification is consistent with Commission precedent.⁴ As

¹ See Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper System, ICFS File No. SAT-MOD-20210806-00095 (filed Aug. 6, 2021) (Kuiper Modification Application); Kuiper Systems LLC, Application for Minor Amendment of Pending Modification of the Kuiper System, ICFS File No. SAT-AMD-20230329-00067 (filed Mar. 29, 2023) (Kuiper Amendment).

² See *Kuiper Systems, LLC, Application for Authority to Deploy and Operate a Ka-band Non-Geostationary Satellite Orbit System*, Order and Authorization, 35 FCC Rcd 8324, 8345, Para. 60 (Jul. 30, 2020) (*Kuiper Authorization*); *Kuiper Systems, LLC, Request for Modification of the Authorization for the Kuiper Systems LLC NGSO Satellite System*, Order and Authorization, 38 FCC Rcd 1112, 1122, para. 44 (2023) (*Kuiper Orbital Debris Modification Order*); *Kuiper Systems, LLC, Request for Modification of the Authorization for the Kuiper NGSO Satellite System*, Order and Authorization, DA 24-224, para. 37 (rel. Mar. 8, 2024) (*Kuiper Orbital Parameters Modification Order*); *Kuiper Systems, LLC, Grant Stamp*, ICFS File No. SAT-MOD-20230201-00013 (granted Apr. 5, 2024) at para. 18 (*Processing Round Coordination Modification Grant*). We note that Kuiper's Modification Application references condition 60, while its amendment refers to condition 44 of its authorization. Condition 60 in the *Kuiper Authorization* became condition 44 in the *Kuiper Orbital Debris Modification Order*. Condition 44 became condition 18 in the most recent Kuiper modification authorization. See *Processing Round Coordination Modification Grant*, at para. 18. We will refer to this condition as condition 18 throughout this Order.

³ See 47 CFR § 25.146.

⁴ See *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, 37 FCC Rcd 14882, 14905, 14951, paras. 32, 135s (2022) (*SpaceX Gen2 First Partial Grant*), *appeals pending sub nom International Dark-Sky Association v. FCC*, No. 22- (continued....)

part of this Order, we deny the petition to deny of Hughes Network Systems LLC (Hughes),⁵ and also deny Hughes's motion to consolidate.⁶ Our action today serves the public interest by promoting rapid deployment of competitive low-earth orbit satellite broadband service for unserved and underserved areas of the United States, while providing additional assurance of protection from harmful interference for operators of geostationary orbit (GSO) satellites.

II. BACKGROUND

2. In Article 22, Section 2, and Resolution 76 of the ITU Radio Regulations, the ITU has established EPFD limits that NGSO operators must comply with to protect GSO operations from harmful interference. The Commission has incorporated these limits into its rules by reference, and therefore an applicant proposing operations in the 10.7-30 GHz frequency range must certify that it will comply with all applicable EPFD limits as established by the ITU.⁷ Additionally, prior to beginning service, an NGSO operator licensed to operate in the 10.7-30 GHz frequency range must obtain a favorable or qualified favorable finding from the ITU regarding its compliance with applicable EPFD limits, in accordance with Resolution 85 of the ITU Radio Regulations.⁸ The operator must then communicate the ITU finding to the Commission and submit the input data files used for the ITU validation software for public disclosure.⁹

3. As part of its original application for authorization of its NGSO constellation, Kuiper submitted multiple filings to the ITU to describe its system.¹⁰ When it granted Kuiper's application on July 30, 2020,¹¹ the International Bureau¹² required Kuiper to obtain an ITU finding "explicitly indicat[ing] that the joint effect of Kuiper's ITU filings associated with its constellation was taken into

1337 (D.C. Cir. filed Dec. 29, 2022), *Dish Network Corp. v. FCC*, No. 23-1001 (D.C. Cir. filed Jan. 3, 2023). Two parties have also filed petitions for reconsideration regarding the *SpaceX Gen2 First Partial Grant*. See Petition for Reconsideration of LeoLabs, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Dec. 30, 2023); Petition for Clarification of Viasat, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Jan. 3, 2023). The Space Bureau has also granted a second partial grant authorizing SpaceX to communicate using E-band frequencies. The condition on SpaceX's authorization that Kuiper requests to match in this modification request is condition 22t. See *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, DA-24-222 at para. 22t (granted Mar. 8, 2024) (*SpaceX E-band Order*).

⁵ Petition to Deny of Hughes Network Systems LLC, ICFS file nos. SAT-MOD-20210806-00095 and SAT-AMD-20230329-00067 (filed May 8, 2023) (Hughes Amendment Petition).

⁶ Motion to Consolidate of Hughes Network Systems LLC, ICFS File Nos. SAT-20200417-00037 and SAT-MOD-20210806-00095 (filed Nov. 22, 2021) (Hughes Motion to Consolidate).

⁷ See 47 CFR § 25.146(a)(2).

⁸ See 47 CFR § 25.146(c).

⁹ *Id.*

¹⁰ See *Kuiper Authorization*, 35 FCC Rcd at 8331, para. 26.

¹¹ See generally *Kuiper Authorization*, 35 FCC Rcd. 8324.

¹² On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, paras. 1-2 (adopted Jan. 4, 2023). The Space Bureau officially launched on April 11, 2023. See Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), <https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf>. All references in this document to the International Bureau and the Satellite Division refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

account when verifying compliance with the applicable EPFD limits.”¹³

4. On August 6, 2021, Kuiper filed the instant modification, in which it originally requested the Bureau remove the condition in its authorization that required the finding Kuiper obtains from the ITU explicitly indicate the joint effect of its multiple ITU filings was taken into account, to match a condition in the Commission’s *SpaceX Third Modification Order*.¹⁴ The Satellite Division placed the Kuiper Modification Application on public notice on August 20, 2021.¹⁵ SES Americom and O3b Limited (SES/O3b) filed comments,¹⁶ and SpaceX, Viasat Inc. (Viasat), Kuiper, and SES/O3b filed replies.¹⁷ Hughes Network Systems, LLC (Hughes), which had also filed a petition for reconsideration of the *SpaceX Third Modification Order*, filed an *ex parte* letter and motion to consolidate Kuiper’s Modification Application with its petition for reconsideration.¹⁸ Parties have continued to make *ex parte*

¹³ See *Kuiper Authorization*, 35 FCC Rcd at 8331, 8345, paras. 26, 60. This condition was included in later modifications of Kuiper’s authorization as well. See *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1122, para. 44; *Kuiper Orbital Parameters Modification Order* at para. 37; *Processing Round Coordination Modification Grant*, at para. 18. The Commission has also twice addressed the issue of an operator of a large NGSO constellations submitting multiple ITU filings to validate compliance with applicable EPFD limits. *Space Exploration Holdings, LLC, Request for Modification of the Authorization for the SpaceX NGSO Satellite System*, Order and Authorization and Order on Reconsideration, 36 FCC Rcd 7995, 8017-18, 8048, Para. 33-34, 97p (2021) (*SpaceX Third Modification Order*). See *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14901-10, paras. 26-40. In the *SpaceX Third Modification Order*, the Commission did not impose the same condition requiring SpaceX to receive a finding from the ITU that explicitly stated the ITU had taken into account the joint effect of SpaceX’s multiple ITU filings. See *SpaceX Third Modification Order*, 36 FCC Rcd at 8018, para. 34. Hughes has filed a petition for reconsideration on the *SpaceX Third Modification Order* requesting the Commission reconsider this decision and impose the same joint-effect condition that is on Kuiper’s license. See Petition for Reconsideration of Hughes Network Systems, LLC, ICFS File No. SAT-MOD-20200417-00037 (filed May 27, 2021). However, in the *SpaceX Gen2 First Partial Grant*, the Commission found it was in the public interest to require SpaceX to receive a finding from the ITU that took into account the joint effect of SpaceX’s eighteen separate ITU filings and prescribed a process for acquiring that finding from the ITU. See *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14904, para. 31. In both the *SpaceX Third Modification Order* and *SpaceX Gen2 First Partial Grant*, the Commission granted SpaceX’s waiver request to permit it to begin operations prior to receiving its ITU finding. *SpaceX Third Modification Order*, 36 FCC Rcd at 8021, 8048, para. 41, 97p; *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14909-10, 14951, 14954, paras. 40, 135s, 141.

¹⁴ See Kuiper Modification Application.

¹⁵ See *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Report No. SAT-01574 (Aug. 20, 2021).

¹⁶ See Comments of SES Americom and O3b Limited, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Sept. 20, 2021) (SES/O3b Comments).

¹⁷ See Reply of Space Exploration Holdings, LLC, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Sept. 30, 2021) (SpaceX Reply); Reply of Viasat, Inc., ICFS File Nos. SAT-MOD-20210806-00095 (filed Oct. 5, 2021) (Viasat Reply); Reply of Kuiper Systems LLC, ICFS File Nos. SAT-MOD-20210806-00095 (filed Oct. 5, 2021) (Kuiper Reply); Reply of SES Americom and O3b Limited, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Oct. 18, 2021) (SES/O3b Reply).

¹⁸ See Hughes Motion to Consolidate. SpaceX and Kuiper opposed Hughes’s motion to consolidate. See Opposition of Space Exploration Holdings LLC, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Dec. 7, 2021) (SpaceX December 7, 2021 Opposition); Opposition of Kuiper Systems Inc., ICFS File Nos. SAT-20200417-00037 and SAT-MOD-20210806-00095 (filed Dec. 10, 2021) (Kuiper December 10, 2021 Opposition); see also Letter from Jennifer A. Manner, Senior Vice President Regulatory Affairs, Hughes Network Systems LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (dated Jan. 18, 2022) (Hughes January 18, 2022 Letter).

submissions.¹⁹

5. On March 29, 2023, Kuiper amended its Modification Application, requesting that the same condition be applied to its authorization as the Commission had applied in the 2022 license grant to SpaceX for its second generation system (*SpaceX Gen2 First Partial Grant*).²⁰ In amending its application, Kuiper no longer requests removal of the EPFD-related condition regarding the joint effect of multiple ITU filings as part of this modification proceeding,²¹ but instead requests partial waiver of section 25.146 of the Commission's rules to permit Kuiper to initiate service at its own risk, prior to receiving a finding from the ITU that explicitly indicates the ITU has taken the joint effect of Kuiper's multiple ITU filings into account.²² The Satellite Division placed the Kuiper application, as amended, on public notice on April 7, 2023.²³ Hughes filed a petition to deny,²⁴ and SES/O3b, Viasat, and SpaceX filed comments.²⁵ Kuiper filed a consolidated opposition and reply,²⁶ and SpaceX and SES/O3b replied.²⁷ Hughes subsequently submitted an ex parte presentation regarding Kuiper's Modification Application, as amended.²⁸ At this time, Kuiper states that it has received separate favorable findings from the ITU for each of its three individual ITU filings.²⁹

III. DISCUSSION

6. After review of the record, we conclude that grant of Kuiper's Modification Application,

¹⁹ See Ex Parte Presentation of Kuiper Systems LLC, ICFS File No. SAT-MOD-20210806-00095 (filed Nov. 8, 2021) (Kuiper November 8, 2021 Ex Parte); Ex Parte Presentation of Hughes Network Systems LLC, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Feb. 3, 2022) (Hughes February 3, 2022 Ex Parte); Ex Parte Presentation of Hughes Network Systems LLC, ICFS File Nos. SAT-MOD-20200417-00037 and SAT-MOD-20210806-00095 (filed Feb. 24, 2022) (Hughes February 24, 2022 Ex Parte); Ex Parte Presentation of Kuiper Systems LLC, ICFS File No. SAT-MOD-20210806-00095 (filed May 18, 2022) (Kuiper May 18, 2022 Ex Parte).

²⁰ See *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14905, 14951, paras. 32, 135s.

²¹ See Opposition of Kuiper Systems LLC, ICFS file No. SAT-AMD-20230329-00067 (filed May 23, 2023) (Kuiper Amendment Opposition) at 1, n. 1 ("Amazon continues to believe that the "joint effect" condition is inappropriate, including because it is contrary to Commission precedent and the public interest . . . [n]evertheless, and for the avoidance of doubt, Amazon is seeking a partial waiver of Section 25.146(c) of the Commission's rules as set forth herein, but does not waive any future arguments regarding the appropriateness of a joint effect condition.").

²² See generally Kuiper Amendment. Prior to filing its amendment, on February 21, 2023, Kuiper filed a letter requesting modification of condition 18 of its authorization—the condition requiring an ITU finding prior to commencing operations that explicitly takes into account the joint effect of Kuiper's multiple ITU filings—not only to remove the joint effect language but also to permit Kuiper to begin operations prior to receiving an ITU finding.

²³ See *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Report No. SAT-01714 (Apr. 7, 2023).

²⁴ Hughes Amendment Petition.

²⁵ Comments of SES Americom and O3b Limited, ICFS File No. SAT-AMD-20230329-00067 (filed May 9, 2023) (SES/O3b Amendment Comments); Comments of Viasat Inc., ICFS File Nos. SAT-MOD-20210806-00095 and SAT-AMD-20230329-00067 (filed May 5, 2023) (Viasat Amendment Comments); Comments of Space Exploration Holdings LLC, ICFS File No. SAT-AMD-20230329-00067 (filed May 8, 2023) (SpaceX Amendment Comments).

²⁶ Kuiper Amendment Opposition.

²⁷ Reply of SES Americom and O3b Limited, ICFS file no. SAT-AMD-20230329-00067 (filed Jun. 5, 2023) (SES/O3b Amendment Reply); Reply of Space Exploration Holdings LLC, ICFS file no. SAT-AMD-20230329-00067 (filed Jun. 5, 2023) (SpaceX Amendment Reply).

²⁸ Ex Parte presentation of Hughes Network Systems LLC, ICFS file nos. SAT-MOD-20210806-00095 and SAT-AMD-20230329-00067 (filed Jun. 20, 2023) (Hughes June 20, 2023 Ex Parte).

²⁹ Kuiper Amendment, Narrative at 4, n.14.

as amended, will serve the public interest subject to the requirements and conditions specified herein. Below, we address the various outstanding issues raised by commenters on Kuiper's application, as amended. Where appropriate, and consistent with prior authorizations for Kuiper, we defer matters of general applicability to ongoing or potential future rulemakings.

A. Motion to Consolidate

7. As a preliminary matter, we deny Hughes's motion requesting we consolidate review of Hughes's reconsideration petition for the *SpaceX Third Modification Order* and the Kuiper Modification Application.³⁰ Hughes argued that consolidated review of both proceedings is consistent with Commission rules, policies, and precedents because the proceedings involve similarly situated applicants and will be resolved on a common set of law and facts.³¹ As noted, in its application as amended, Kuiper no longer seeks removal of the joint-effect requirement for its ITU finding in this proceeding and focuses instead on a partial waiver request to allow it to begin operations while the ITU considers the joint effect of its multiple filings.³² Since Hughes' arguments in its motion to consolidate focus on the existence of the joint effect condition, we find there is no persuasive argument at this time for consolidating review.³³

B. The Joint Effect Condition

8. We maintain the joint effect condition on Kuiper's authorization. For purposes of this proceeding, we interpret Kuiper's amendment, seeking partial waiver of section 25.146(c) to begin operations prior to receiving the finding from the ITU on the joint effect of its multiple ITU filings, as superseding its initial request for this modification to remove the joint-effect language altogether.³⁴ We therefore do not address Kuiper's request to remove the joint-effect finding requirement.

9. In accordance with Commission precedent, we describe herein the process for Kuiper to meet the requirements of the joint effect condition, including submitting certain materials to the Commission and making those available to other parties.³⁵ Kuiper must submit a single combined filing to the Space Bureau, including an input datafile and output file for all of its proposed satellites, prior to deploying additional authorized satellites.³⁶ Kuiper must confirm via certification that this combined filing demonstrates compliance with all applicable EPFD limits. Several commenters argue they need assurances that Kuiper's system as a whole will not violate the EPFD limits and cause harmful interference to their operations.³⁷ To that end, SES/O3b and Hughes both propose the Bureau require

³⁰ Hughes Motion to Consolidate at 1.

³¹ *Id.* at 1-2.

³² Kuiper February 21, 2023 Letter at 1-2; Kuiper Amendment, Narrative at 1, 5. As discussed below, based on Kuiper's statements in the record, we find that Kuiper has clarified that it is no longer seeking removal of the joint-effect requirement in this proceeding. Kuiper Amendment Opposition at 1.

³³ See Hughes Amendment Petition.

³⁴ Commenters on Kuiper's amendment application ask the Commission to deny the portion of the modification seeking to remove the joint effect requirement. See e.g. Hughes Amendment Petition at 2; Viasat Amendment Comments at 2.

³⁵ See *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14904, para. 31.

³⁶ To date, Kuiper has deployed two authorized prototype satellites which were originally authorized under an experimental license but have been incorporated into its part 25 license. See *Kuiper Orbital Parameters Modification Order* at paras. 8-9.

³⁷ Viasat Reply at 2; Viasat Amendment Comments at 1-2; Hughes Amendment Petition at 1-2; SES/O3b Amendment Comments at 1-2; Hughes June 20, 2023 Ex Parte, attachment at 1. Kuiper argues that its commitment to operate on a non-interference basis until it receives an ITU finding taking into account the joint effect of its multiple filings, along with its commitment to modify its operations should it receive an unfavorable finding, should be sufficient assurance for these GSO operators. Kuiper Amendment Opposition at 3-4.

Kuiper to provide the input data necessary to run the ITU compliance software for its system as a whole.³⁸ Kuiper agrees it must be subject to the same obligations as the Commission has previously applied,³⁹ and states that it will accept a condition requiring it to provide information regarding its EPFD compliance for its entire system to interested parties.⁴⁰ We note that Kuiper's authorization is already conditioned such that Kuiper must provide its input files for running the ITU validation software to any requesting party.⁴¹ Again, consistent with Commission precedent,⁴² we find that it is in the public interest to continue to require Kuiper to provide its EPFD input datafiles to requesting parties, particularly given our grant herein of Kuiper's request for a partial waiver of 25.146(c) to allow it to begin operations prior to obtaining a joint-effect finding from the ITU. We note that Kuiper's proposed condition mirrors the condition the Commission placed on SpaceX's second generation system authorization,⁴³ but SES/O3b is correct that the Commission did require SpaceX to provide both its input and output files for its combined filing.⁴⁴ We therefore condition Kuiper's authorization as follows: Kuiper must make available to any requesting party the data used as input to the ITU approved validation software and the results it obtained from running the ITU validation software to demonstrate compliance with applicable EPFD limits, including the data that combine the Kuiper System satellites into one consolidated file.

C. Partial Waiver Request of Section 25.146(c)

10. Generally, the Commission may waive any rule for good cause shown.⁴⁵ A waiver is appropriate if (1) special circumstances warrant a deviation from the general rule, and (2) such deviation

³⁸ SES/O3b Amendment Comments at 1-2; SES/O3b Comments at 5; Hughes Amendment Petition at 2, 5. Hughes proposes the Bureau require Kuiper "(i) clarify that its self-certification of EPFD compliance is based upon the operations of its entire system; and (ii) submit for public review both input data files and output calculations showing EPFD compliance." Hughes Amendment Petition at 2, 5; Hughes June 20, 2023 Ex Parte, Attachment at 1, 2. Hughes argues these conditions are in line with the Commission's rules and will provide important safeguards for GSO operators, especially if the Commission chooses to grant Kuiper's waiver request. Hughes Amendment Petition at 5. Similarly, SES/O3b specifically proposes the Bureau condition Kuiper's authorization such that Kuiper "must make available to any requesting party within 30 days of the request: the data used as input to the ITU-approved validation software to demonstrate compliance with applicable [EPFD] limits as well as the EPFD results it obtained by running the ITU software, along with confirmation that the EPFD input files and results reflect the operations of its complete system pursuant to all ITU filings associated with its NGSO satellite constellation." SES/O3b Comments at 5, 6; SES/O3b Amendment Comments at 1-2, 3. Initially Kuiper objected to these proposed conditions. Kuiper Reply at 2, 4-5; Kuiper November 8, 2022 Ex Parte at 4; *see also* SpaceX Reply at 1, 3, 4. Kuiper now acknowledges it should be subject to the same sharing condition as SpaceX. Kuiper Amendment Opposition at 7.

³⁹ *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14905-06, para. 33.

⁴⁰ Kuiper Amendment Opposition at 7. Kuiper proposes the Bureau condition its authorization such that Kuiper "must make available to any requesting party the data used as input to the ITU approved validation software to demonstrate compliance with applicable Equivalent Power Flux-Density (EPFD) limits, including the data that combine the Kuiper System satellites into one consolidated file." Kuiper Amendment Opposition at 7. SES/O3b objects that Kuiper does not commit to also providing the outputs from running a combined file through the ITU validation software and requests the Commission require it to do so, as it required SpaceX to do for its Gen2 system. SES/O3b Amendment Reply at 1, 2-3.

⁴¹ *See Processing Round Coordination Modification Grant*, at para. 18.

⁴² *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14906, para. 33.

⁴³ Kuiper Amendment Opposition at 7; *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14951, para. 135t.

⁴⁴ SES/O3b Amendment Reply at 1, 2-3; *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14905, para. 32.

⁴⁵ 47 CFR § 1.3.

better serves the public interest.⁴⁶ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴⁷

11. In its amendment, Kuiper requests partial waiver of section 25.146(c) of the Commission's rules.⁴⁸ Specifically, Kuiper requests that we waive the part of the rule requiring that a licensee receive a favorable or qualified favorable finding from the ITU regarding its compliance with applicable ITU EPFD limits "[p]rior to the initiation of service," allowing Kuiper to deploy its satellites and begin operations prior to receiving the finding from the ITU regarding the joint effect of its multiple ITU filings.⁴⁹ Kuiper asserts that should any harmful interference occur to GSO systems in frequency bands subject to ITU EPFD limits during the period prior to receiving the finding, Kuiper will take all reasonable steps to eliminate such interference.⁵⁰ Kuiper argues that there is good cause for such a waiver because the ITU does not currently have a process for assessing the joint effect of multiple ITU filings, nor is it subject to a timeframe to complete such an assessment; thus, Kuiper would be unnecessarily delayed in commencing operations.⁵¹ Kuiper also argues that waiver is appropriate because it will enable faster deployment of its system and accelerate its efforts to close the digital divide with low-latency, high speed broadband connectivity.⁵² Finally, Kuiper argues that the waiver is supported by equity grounds, because Kuiper is similarly situated to SpaceX, and the Commission granted a similar partial waiver in the *SpaceX Gen2 Partial Grant*.⁵³

12. Commenters object to Kuiper's waiver request, arguing it would allow Kuiper to begin operations and continue operating with no assurance that there will ever be a finding from the ITU that its system as a whole complies with the applicable EPFD limits, essentially rendering the joint-effect condition meaningless.⁵⁴ Hughes claims Kuiper's waiver request falls short of the Commission's standard for granting waivers, because it would plainly undermine the purpose of the rule, namely the protection of

⁴⁶ *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)).

⁴⁷ See *Northeast Cellular*, 897 F.2d at 1166 ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation"); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

⁴⁸ 47 CFR § 25.146(c).

⁴⁹ *Id.* See Kuiper Amendment, Narrative at 1, 5; Kuiper February 21, 2023 Letter at 2.

⁵⁰ Kuiper February 21, 2023 Letter at 2. Moreover, Kuiper argued that Condition 18 should require it: (1) adjust operations if it receives an unfavorable finding from the ITU; and (2) acknowledge that, in the event of actual harmful interference to GSO operations, the FCC will take appropriate action. *Id.*

⁵¹ Kuiper Amendment at 6.

⁵² *Id.* at 5.

⁵³ *Id.* at 6-7. Kuiper cites to the similar condition in the *SpaceX Gen2 First Partial Grant* that it must "(1) commence operations at its own risk; (2) adjust operations if it does not receive a favorable joint effect determination from the ITU; and (3) operate on a non-interference basis until the Commission has been notified of the ITU joint effect findings." *Id.* Should any interference occur during this period, Kuiper stated it would take all reasonable steps to eliminate such interference. *Id.*

⁵⁴ Hughes Amendment Petition at 1, 3; Viasat Amendment Comments at 2; Hughes June 20, 2023 Ex Parte, attachment at 1.

GSO systems from harmful interference.⁵⁵ Hughes also argues that uncertainty and delay caused by the ITU review process does not rise to the level of special circumstances required to justify a waiver, as these circumstances are applicable to all NGSO operators.⁵⁶ Hughes further asserts that the Commission's grant of a similar waiver to SpaceX does not bear upon Kuiper's request, as Kuiper is not planning to launch its first commercial satellites until the first half of 2024 at the earliest and Kuiper does not provide evidence that the launch of its initial commercial satellites is sufficient to begin providing service.⁵⁷

13. We grant Kuiper a partial waiver of section 25.146(c). We disagree with Hughes's claim that Kuiper has not presented special circumstances to justify a waiver under our rules.⁵⁸ On the contrary, we find that Kuiper is poised to begin rapidly deploying and operating its satellite constellation,⁵⁹ which will bring broadband service to unserved and underserved Americans across the United States. Kuiper has already deployed two prototype satellites and has stated that it is preparing to deploy and begin operations with its constellation in the coming months.⁶⁰ Kuiper sought a partial waiver of section 25.146(c) in advance of its planned deployment to prevent delay in initiation of service and allow the Commission time to review its modification request.⁶¹ We do not find that the timing of Kuiper's modification request—filed prior to launch of its satellites—weighs against granting a partial waiver of section 25.146(c).⁶² While Kuiper may not be able to begin providing broadband service immediately after its initial launches,⁶³ the sooner it begins deploying and operating its satellites, the sooner it will be capable of providing service. Delaying deployment and operations until after it has received an ITU finding on its combined filing will only delay the provision of competitive broadband service even further. There is not currently a standard timeline for the ITU to make a “favorable” or “qualified favorable” finding indicating that it has taken into account the joint effect of Kuiper's ITU filings.⁶⁴ Kuiper's individual ITU filings previously required 30 months to receive a favorable finding from the ITU,⁶⁵ and the only other operator required to obtain a joint-effect finding, SpaceX, has not yet received a finding on its combined filing, which was submitted to the ITU over a year ago. Thus, requiring Kuiper to receive the joint-effect finding prior to commencing operations could significantly delay Kuiper's

⁵⁵ Hughes Amendment Petition at 3; Hughes June 20, 2023 Ex Parte, attachment at 1. Hughes further argues that grant of Kuiper's waiver request would remove any incentive for Kuiper to receive a timely ITU finding. Hughes Amendment Petition at 3.

⁵⁶ Hughes Amendment Petition at 3-4. Hughes also argues that the fact that Kuiper has received favorable findings for its three separate filings belies its claims of uncertainty and delay at the ITU. *Id.* at 4.

⁵⁷ *Id.* at 4; Hughes June 20, 2023 Ex Parte, attachment at 2. We note that Kuiper has now launched two prototype satellites, which the Space Bureau has incorporated into its part 25 commercial license. *See Kuiper Orbital Parameters Modification Order* at para. 9.

⁵⁸ *See* Hughes Amendment Petition at 2-4.

⁵⁹ Kuiper Amendment Opposition at 6.

⁶⁰ Kuiper Amendment, Narrative at 4, n.13.

⁶¹ *See* Kuiper Amendment Opposition at 6-7.

⁶² *See* Hughes Amendment Petition at 4.

⁶³ *See id.*; Hughes June 20, 2023 Ex Parte, attachment at 2.

⁶⁴ *See e.g.* Kuiper Amendment Opposition at 2, 6. Kuiper notes that it took thirty months for it to receive favorable findings on its three individual filings and it expects a finding regarding its combined operations could take even longer. *Id.* at 6. We note that SpaceX's consolidated filing is still under review at the ITU for compliance with applicable ITU EPFD limits.

⁶⁵ *See* Kuiper Amendment Opposition at 6.

initiation of service.⁶⁶ This would thereby delay provision of competitive broadband services to unserved and underserved areas of the United States. While we have outlined a process for Kuiper to receive a finding from the ITU that would satisfy the joint-effect finding requirement, the timeline for such a process is currently uncertain. We conclude that such circumstances go beyond any typical uncertainty or delay that could occur in the context of more established ITU processes.⁶⁷ We also note that we may consider equity in deciding to grant a waiver request.⁶⁸ The full Commission has previously granted a similar partial waiver of this rule based on the delay in receiving an ITU finding and the extensive public interest benefits in rapid deployment.⁶⁹ Permitting Kuiper to begin operations on a non-interference basis will benefit the public interest by creating additional competitive options for low-Earth orbit satellite broadband services in the United States.

14. SES/O3b asserts that if the Bureau chooses to grant Kuiper's waiver request, it must also require Kuiper to provide its input and output data for running the ITU validation software to interested parties, as the Commission required SpaceX to do when it granted this waiver to SpaceX.⁷⁰ As discussed above, we are conditioning Kuiper's authorization to require it to provide the datafiles used as inputs to the ITU validation software and results from running the software, including for the combined filing it must submit to the Commission, to any interested party. We believe this condition will provide additional assurance to GSO operators that they will not experience harmful interference pending a finding from the ITU, particularly when combined with the other conditions on Kuiper's operations during this interim period. We also note Kuiper's commitment to operate on a non-interference basis until it receives a favorable or qualified favorable finding from the ITU on its combined filing as well as its commitment to adjust its operations to come into compliance with the applicable EPFD limits in the event it receives an unfavorable finding,⁷¹ and we condition this authorization accordingly. We agree with Kuiper that these additional conditions should further assure GSO operators.⁷²

15. For the foregoing reasons, we find that special circumstances warrant a partial waiver of section 25.146(c) and that it is in the public interest to permit Kuiper to deploy its satellites and begin operations prior to receiving a favorable or qualified favorable finding from the ITU, as required under section 25.146(c) and the conditions on its license. Although some commenters argue that grant of a waiver would undermine the purpose of the rule, we disagree, given that Kuiper is required to certify to the Commission that its EPFD analysis taking into account the joint effect of multiple filings will comply with ITU limits and that Kuiper has agreed that its operations will be on a non-interference and unprotected basis pending a finding from the ITU.

16. Therefore, we grant Kuiper's request for partial waiver of section 25.146(c) of the Commission's rules,⁷³ allowing it to commence operations on a non-interference basis prior to receiving a

⁶⁶ See *id.* See also Kuiper Amendment at 6 (“[T]he ITU does not currently have a process for assessing the ‘joint effect’ of multiple ITU filings, nor is it subject to a timeframe to complete such an assessment. Amazon could therefore be waiting months, if not years, to commence operations.”); Kuiper Amendment Opposition at 2, 3 n.6 (“Waiting an indeterminate period of time for the ITU to establish procedures for a joint effect analysis could jeopardize Amazon’s ability to meet its buildout milestones or even prevent deployment of the Kuiper System altogether if the ITU never adopts such procedures.”).

⁶⁷ See Hughes Amendment Petition at 3-4.

⁶⁸ See *WAIT Radio*, 418 F.2d at 1159.

⁶⁹ See *SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14909-10, 14951, 14954, paras. 40, 135s, 141.

⁷⁰ SES/O3b Amendment Comments at 3.

⁷¹ See *e.g.* Kuiper Amendment Opposition at 2-3.

⁷² See *id.* at 3-4.

⁷³ 47 CFR § 25.146(c).

favorable or qualified favorable finding from the ITU for its combined filing. Kuiper's operations during this time are at its own risk, and in the event that Kuiper's operations cause harmful interference, Kuiper must immediately cease operations and notify the Commission in writing of such an event. Additionally, if Kuiper receives an unfavorable finding from the ITU for its combined filing, it must adjust operations to come into compliance with the applicable EPFD limits.

D. Orbital Debris Conditions

17. SpaceX argues that if the Bureau finds that Kuiper is similarly situated with SpaceX and therefore partially waives section 25.146(c) of the Commission's rules, it must also impose all the "space sustainability" requirements that were included in SpaceX's *Gen2 Partial Grant*.⁷⁴ We continue to reject this argument, for the same reasons addressed in our March 8, 2024 Order granting a separate Kuiper modification request.⁷⁵ There is nothing about the instant Kuiper modification request as amended or in SpaceX's arguments in response that suggest any different or additional conditions should be applied to Kuiper with respect to orbital debris mitigation or related matters beyond what we recently specified in our separate Kuiper modification grant.

IV. CONCLUSION AND ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, that the Kuiper Modification Application, as amended, filed by Kuiper Systems LLC (Kuiper), is GRANTED, pursuant to section 309(a) of the Communications Act of 1934, as amended, 47 USC § 309(a).

19. IT IS FURTHER ORDERED that Kuiper's authorization is subject to the following requirements and conditions:⁷⁶

20. Prior to commencing operations in the 17.8-18.6 GHz and 18.8-20.2 GHz and 27.5-30 GHz bands, Kuiper must certify that it has completed a coordination agreement with or make a showing that it will not cause harmful interference to any operational system licensed or granted U.S. market access in the NGSO FSS processing rounds referred to in Public Notices DA 16-804, 31 FCC Rcd 7666 (IB 2016) and DA 17-525, 32 FCC Rcd 4180 (IB 2017). Kuiper may commence operations at its own risk, on a non-interference, unprotected basis with respect to any operations authorized in earlier processing rounds for which coordination has not been completed, prior to the approval of its showing by the Commission.

21. Kuiper's operations must comply with spectrum sharing procedures among NGSO FSS space stations specified in 47 CFR § 25.261 with respect to any NGSO system licensed or granted U.S. market access pursuant to the March 2020 Processing Round initiated by Public Notice, DA 20-325. Spectrum sharing between Kuiper's operations and operations of NGSO systems granted U.S. market access, where such operations do not include communications to or from the U.S. territory, are governed only by the ITU Radio Regulations and are not subject to section 25.261.

22. Kuiper must timely provide the Commission with the information required for Advance Publication, Coordination, and Notification of the frequency assignment(s) for this constellation, including a consolidated file containing information regarding its entire constellation and including due diligence information, pursuant to Articles 9 and 11 of the ITU Radio Regulations. This authorization may be modified, without prior notice, consistent with the coordination of the frequency assignment(s)

⁷⁴ See SpaceX Amendment Comments at 1-2.

⁷⁵ See *Kuiper Orbital Parameters Modification Order* at paras. 15-18. SpaceX has filed an Application for Review of the *Kuiper Orbital Parameters Modification Order*. See Application for Review of Space Exploration Holdings, LLC, ICFS File Nos. SAT-MOD-20230228-00043 and SAT-AMD-20230613-00140 (filed Apr. 8, 2024).

⁷⁶ The conditions here replicate the full set of conditions applicable to Kuiper operations as specified in prior orders, except that a new condition has been added at paragraph 37, and conditions in paragraphs 22, 36, and 38 have been modified.

with other Administrations. See 47 CFR § 25.111(b). Kuiper is responsible for all cost-recovery fees associated with the ITU filings. 47 CFR § 25.111(d).

23. In connection with the provision of service in any particular country, Kuiper is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

24. Kuiper must accept any additional interference resulting from its orbital parameters modification⁷⁷ compared to its current authorization, from licensees or market access grantees authorized in the Commission's NGSO 2020 Processing Round.

25. Kuiper must comply with all conditions on its experimental licenses, except as modified in the *Kuiper Orbital Parameters Modification Order*,⁷⁸ for operations of its two prototype satellites.

26. Operations in portions of the 17.8-18.6 GHz, 18.8-20.2 GHz, and 27.5-30 GHz bands, including MSS operations in the 19.7-20.2 GHz and 29.5-30 GHz bands, are authorized up to the applicable power flux-density and equivalent power-flux density limits contained in Articles 21 and 22, as well as Resolution 76 of the ITU Radio Regulations. In addition, operations must comply with the out-of-band emissions limits in 25.202(f), 47 CFR § 25.202(f).

27. Operations in the 19.3-19.4 GHz and 19.6-19.7 GHz (space-to-Earth) frequency bands are authorized up to the power flux-density limits in Article 21 of the ITU Radio Regulations that govern NGSO FSS systems in the 17.7-19.3 GHz (space-to-Earth) frequency band. Operations in the band 19.3-19.4 GHz and 19.6-19.7 GHz are on a secondary basis with respect to the GSO FSS. Blanket authorized earth stations in the 19.3-19.4 GHz and 19.6-19.7 GHz bands operate on a secondary basis with respect to the fixed service.

28. Kuiper must cooperate with other NGSO FSS operators in order to ensure that all authorized operations jointly comport with the applicable limits for aggregate equivalent power flux density in the space-to-Earth direction contained in Article 22 of the ITU Radio Regulations, as well as Resolution 76 (WRC-03) of the ITU Radio Regulations.

29. Operations in the 17.7-17.8 GHz band are limited to service outside of the United States and must not cause harmful interference to nor claim protection from assignments in the broadcasting-satellite service operating in conformity with the Radio Regulations, pursuant to 5.517 of the U.S. Table of Frequency Allocations.

30. Operations in the 17.8-18.3 GHz frequency band are on a secondary basis with respect to the fixed service.

31. Operations in the 19.3-19.7 GHz and 29.1-29.5 GHz bands must be coordinated with any previously authorized NGSO MSS systems not included in the March 2020 Processing Round over the bands designated for use by NGSO MSS feeder links. Until any coordination agreement required is obtained, operations shall not be conducted in these frequency bands. Sharing of the 19.3-19.7 GHz and 29.1-29.5 GHz bands with other systems authorized within the March 2020 Processing Round will be subject to section 25.261.

32. MSS operations in the 19.7-20.2 GHz and 29.5-30 GHz bands shall be conducted on a non-interference, non-protected basis with respect to other FSS operations in these bands.

33. Operations in the 27.5-28.35 GHz band are secondary with respect to Upper Microwave Flexible Use Service (UMFUS) operations, except for FSS operations associated with earth stations authorized pursuant to 47 CFR § 25.136.

34. In accordance with footnote NG62 to 47 CFR § 2.106, in the 28.5-29.1 GHz and 29.25-

⁷⁷ See *Kuiper Orbital Parameters Modification Order*.

⁷⁸ See *id.*

29.5 GHz bands, Kuiper shall not cause harmful interference to, or claim protection from, stations in the fixed service listed in that footnote.

35. Space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands must complete coordination with U.S. Federal systems, in accordance with footnote US334 to the United States Table of Frequency Allocations, 47 CFR § 2.106, prior to being used. The use of space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands must be in accordance with any signed coordination agreement between Kuiper and U.S. Federal operators. Two weeks prior to the start of any operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands, Kuiper must provide contact information for a 24/7 point of contact for the resolution of any harmful interference to Jimmy Nguyen, Email: Jimmy.Nguyen@us.af.mil.

36. Kuiper's request for partial waiver of section 25.146(c) of the Commission's rules, 47 CFR § 25.146(c), is GRANTED. Under 47 CFR § 25.146(c), Kuiper must receive a favorable or "qualified favorable" finding in accordance with Resolution 85 with respect to its compliance with applicable EPFD limits in Article 22 of the ITU Radio Regulations as per paragraph 26 of the original grant document.⁷⁹ Kuiper must communicate the ITU finding to the Commission and, in case of an unfavorable finding, adjust its operation to satisfy the ITU requirements.

37. Prior to receiving a favorable or qualified favorable finding from the ITU for its consolidated file, Kuiper must conduct operations on an unprotected, non-interference basis, i.e. Kuiper must not cause interference to, and must not claim protection from interference caused to it by, any other lawfully operating station. In the event of any harmful interference under this grant, Kuiper must immediately cease operations upon notification of such interference and inform the Commission, in writing, of such an event.

38. Kuiper must make available to any requesting party the data used as input to the ITU approved validation software and the results it obtained from running the ITU approved validation software to demonstrate compliance with applicable Equivalent Power Flux-Density (EPFD) limits, including the data that combine the Kuiper System satellites into one consolidated file.

39. Kuiper must comply with the sharing of ephemeris data procedures described in section 25.146 of the Commission's rules. 47 CFR § 25.146(e).

40. Kuiper must coordinate physical operations of spacecraft with any operator using similar orbits, for the purpose of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

41. This authorization and any earth station licenses granted in the future are subject to modification to bring them into conformance with any rules or policies adopted by the Commission in the future.

42. During launch and early orbit phase operations, payload testing, and deorbit of its satellites, Kuiper must operate on a non-harmful interference basis, i.e. Kuiper must not cause harmful interference and must accept any interference received. In the event of any harmful interference under this grant, Kuiper must immediately cease operations upon notification of such interference and inform the Commission, in writing, of such an event.

43. Kuiper may not deploy any of its 3,232 satellites authorized in this grant directly to their operational altitudes.

44. Kuiper must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following information:

⁷⁹ See *Kuiper Authorization*, 35 FCC Rcd at 8331, 8345, paras. 26, 60.

- a. The number of conjunction events identified for Kuiper satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties,
- b. Satellites that, for purposes of disposal, were removed from operation or screened from further deployment at any time following initial deployment, and identifying whether this occurred less than five years after the satellite began regular operations or were available for use as an on-orbit replacement satellite,
- c. Satellites that re-entered the atmosphere,
- d. Satellites for which there was a disposal failure, i.e., a satellite that loses the capability to maneuver effectively after being raised from its injection, including a discussion of any assessed cause of the failure and remedial actions,
- e. Identification of any collision avoidance system outages or unavailability, either on a system-wide basis or for individual satellites. An “outage” would include any individual satellite anomaly that results in a satellite not achieving targeted risk mitigation via maneuver.

45. Kuiper must also provide a report if during any continuous one-year period there are two or more satellite disposal failures. Such report shall be filed not later than 10 days following the second disposal failure and must either state the assessed cause of the failure and remedial actions for each of the disposal failures during the period, if available, or provide a schedule for completion of a process for doing so. Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk.

46. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, Kuiper must review and take all possible steps to assess the collision risk and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

47. Kuiper must communicate and collaborate with NASA to ensure that deployment and operation of its satellites does not unduly constrain deployment and operation of NASA assets and missions, supports safety of both Kuiper and NASA assets and missions, and preserves long-term sustainable space-based communications services. Kuiper must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition para. 25.

48. Kuiper must continue to coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA’s science missions involving astronomy.

49. Kuiper must monitor its satellites’ propellant reserves to ensure that the Kuiper satellites are able to fully perform collision avoidance maneuvers during operations at the relevant altitudes specified in its application as well as complete maneuvers to lower the apogee to below any inhabitable space stations. Should a Kuiper satellite engage in more maneuvers than originally projected or otherwise consume propellant more rapidly than anticipated, Kuiper must initiate deorbit operations early in order to ensure that sufficient propellant remains to complete deorbit maneuvers. Kuiper must make available to other operators supplemental information, based on GPS readings or other supplemental sources, such as third-party observations, sufficient to reduce covariance of predicted trajectories to a level that facilitates

collision avoidance procedures, as coordinated with other operators.

50. Kuiper must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy. Kuiper must submit an annual report to the Commission, by January 1st each year covering the preceding year containing the following information: (1) whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps Kuiper has taken to reduce the impact of its satellites on optical astronomy, including but not limited to darkening, deflecting light away from the Earth, attitude maneuvering, and provision of orbital information to astronomers for scheduling observations around satellites' locations.

51. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, any investments made toward operations in the bands authorized in this Order by Kuiper in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions. This includes, but is not limited to, any conditions or requirements resulting from any action in the proceedings associated with IB docket 22-271 and IB Docket 18-818,⁸⁰ WT Docket 20-443,⁸¹ WT docket 20-133,⁸² IB docket 21-456,⁸³ and GN Docket 22-352.⁸⁴

52. This authorization is also subject to the following requirements:

- a. Kuiper must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than August 30, 2020, and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and
- b. Kuiper must launch 50% of the maximum number of proposed space stations, place them in the assigned orbits, and operate them in accordance with the station authorization no later than July 30, 2026, and Kuiper must launch the remaining space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate each of them in accordance with the authorization no later than July 20, 2029, 47 CFR § 25.164(b).⁸⁵

53. Failure to post and maintain a surety bond will render this grant null and void automatically, without further Commission action. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in Kuiper's authorization being reduced to the number of satellites in use on the milestone date. Failure to comply with the milestone requirement of 47 CFR § 25.164(b) will also result in forfeiture of Kuiper's surety bond. By August 14, 2026, Kuiper must either demonstrate compliance

⁸⁰ See generally *Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020).

⁸¹ See generally *Expanding Flexible Use of the 12.2-12.7 GHz Band, et. al.*, WT Docket No. 20-443, Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021).

⁸² See generally *Modernizing and Expanding Access to the 70/80/90 GHz Bands, et al.*, WT Docket No. 20-133, Report and Order and Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020).

⁸³ See generally *Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems; Revision of Section 25.261 of the Commission's Rules to Increase Certainty in Spectrum Sharing Obligations Among NGSO FSS Systems*, IB Docket No. 21-456, Order and Notice of Proposed Rulemaking, 36 FCC Rcd 17871 (2021).

⁸⁴ See generally *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry and Order, 37 FCC Rcd 13427 (2022).

⁸⁵ We note that the *NGSO FSS Order* modified section 25.164(b) to offer additional flexibility and requires launch and operation of 50% of an authorized system within six years of grant and the remaining satellites within nine years of grant.

with its milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

54. IT IS FURTHER ORDERED that the Petition to Deny of Hughes Network Systems is DENIED.

55. IT IS FURTHER ORDERED that the Motion to Consolidate of Hughes Network Systems is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau



PUBLIC NOTICE

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Released: April 22, 2024

MEDIA BUREAU ANNOUNCES PUBLICATION OF “ALL-IN” PRICING REPORT AND ORDER

Compliance is not required until December 19, 2024 at earliest

MB Docket No. 23-203

On March 19, 2024, the Commission released the *All-In Pricing Report and Order*, which adopted a rule that requires cable operators and direct broadcast satellite providers “to specify the ‘all-in’ price for video programming in their promotional materials that include pricing information and on subscribers’ bills.”¹ By this Public Notice, the Media Bureau (Bureau) announces that the *All-In Pricing Report and Order* was published in the Federal Register on April 19, 2024, and thus is effective as of this date.²

By the terms of the *All-In Pricing Report and Order*, however, compliance “will not be 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 “will not be 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.”³ The Bureau will publish a subsequent Public Notice to remind the public about the compliance dates once the Office of Management and Budget completes its review of the rule’s requirements.⁴

- FCC -

¹ *All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, Report and Order, FCC 24-29 (rel. Mar. 19, 2024) (*All-In Pricing Report and Order*).

² Federal Communications Commission, *All-In Pricing for Cable and Satellite Television Service*, 89 Fed. Reg. 28660 (Apr. 19, 2024).

³ *All-In Pricing Report and Order* at para. 66.

⁴ *Id.* (“The Commission directs the Media Bureau to announce the compliance date for section 76.310 by subsequent Public Notice and to cause section 76.310 to be revised accordingly.”).

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

In the Matter of	)	
	)	
CASTELLI MEDIA, LLC	)	Facility ID No. 182057
	)	NAL/Acct. No. 202341420045
Application for License to Cover for Low Power	)	FRN: 0032494429
Television Station	)	LMS File No. 0000232484
K35PH-D, College Station, Texas	)	

FORFEITURE ORDER

Adopted: April 23, 2024

Released: April 23, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500) to Castelli Media, LLC (CML or Licensee), licensee of low power television (LPTV) station K35PH-D, College Station, Texas (K35PH-D or Station). We find that CML willfully violated section 73.3598(a)¹ of the Commission's rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745(a) of the Rules² and section 301 of the Communications Act of 1934 (Act)³ by engaging in unauthorized operation.

II. BACKGROUND

2. On December 21, 2023, the Media Bureau (Bureau) issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* in the amount of three thousand five hundred dollars (\$3,500) to CML.⁴ In the *NAL*, we found that CML failed to file a license to cover by the expiration date of the Station's original construction permit (CP) and that the CP and the CP was automatically forfeited.⁵ The CP was later automatically forfeited, the Station's call sign deleted, and all authority to construct the Station terminated.⁶ CML subsequently sought reconsideration of the cancellation, reinstatement of the Station's expired CP, and permission to file an application for license to cover.⁷ On December 11, 2023, the Media Bureau's Video Division granted CML's Petition,⁸ granted a

¹ 47 CFR § 73.3598(a).

² 47 CFR § 73.1745(a).

³ See 47 U.S.C. § 301.

⁴ See *Castelli Media, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 23-200 (MB 2023).

⁵ *Id.* at 2.

⁶ See Letter to Castelli Media LLC from Barbara A. Kreisman, Chief, Video Division (Sept. 12, 2023) a copy of which is available at LMS File No. 0000210687.

⁷ See *Castelli Media, LLC* Petition for Reconsideration (Oct. 12, 2023) (Petition) a copy of which is available at LMS File No. 0000232484.

⁸ See E-Mail to Castelli Media, LLC from Shaun Maher, Video Division (Dec. 11, 2023) (Division Email), a copy of which is available at LMS File No. 0000232484.

waiver of the Commission's rules and reinstated the Station's CP,⁹ and instructed CML to file an application for license to cover within 10 days. CML promptly submitted an application for license to cover for the Station on December 12, 2023.¹⁰

3. Based upon these facts, the Bureau, in the *NAL*, found that CML failed to timely submit a license to cover the CP facilities and also engaged in unauthorized operation of the Station in violation of section 301 of the Act and section 73.1745 of the Rules¹¹ and concluded that CML had apparently violated the Rules and Act and was apparently liable for a forfeiture of three thousand five hundred (\$3,500) dollars.¹² CML was offered an opportunity to either pay the forfeiture or submit a written response seeking reduction or cancellation of the proposed forfeiture.¹³ CML did neither.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,¹⁴ section 1.80 of the rules,¹⁵ and the Commission's *Forfeiture Policy Statement*.¹⁶ In assessing forfeitures, section 503(b)(2) of the Act requires that we "take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁷

5. Here, CML failed to either pay the forfeiture or seek a reduction or cancellation. Taking into account the above statutory factors, our rules, and the *Forfeiture Policy Statement*, we therefore find that CML willfully violated section 73.3598(a) of the Rules¹⁸ and willfully and repeatedly violated section 73.1745(a) of the Rules and section 301 of the Act.¹⁹ Accordingly, we conclude that based on the facts and circumstances a forfeiture in the amount of three thousand five hundred dollars (\$3,500), as proposed in the *NAL* is warranted. Furthermore, as stated in the *NAL*, we will grant the Station's pending license

⁹ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. *See, e.g., Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 11 (2011) (upholding as proper the Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). The Division found that based on the specific facts and circumstances presented here waiver was warranted. *See Division Email, supra* n. 8.

¹⁰ LMS File No. 0000232484.

¹¹ *NAL* at 3 *citing* 47 CFR § 73.1745.

¹² *Id.* at 3.

¹³ *Id.* at 5.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

¹⁶ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁷ 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.

¹⁸ 47 CFR § 73.3598(a).

¹⁹ 47 CFR § 73.1745; and 47 U.S.C. § 301.

application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant.²⁰

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Act,²¹ and sections 0.61, 0.204, 0.283, and 1.80 of the Rules,²² that Castelli Media, LLC **SHALL FORFEIT** to the United States the sum of three thousand five hundred dollars (\$3,500) for willfully violated sections 73.3598(a)²³ of the Rules by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745(a) of the Rules²⁴ and section 301 of the Act,²⁵ by engaging in unauthorized operation.

7. **Payment of the forfeiture shall be made within thirty (30) calendar days after the release of this Forfeiture Order.**²⁶ Licensee shall send electronic notification of payment to VideoNAL@fcc.gov. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁷

8. Payments shall be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁸ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:²⁹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the

²⁰ See LMS File No. 0000232484.

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 0.61, 0.204, 0.283, and 1.80.

²³ 47 CFR § 73.3598(a).

²⁴ 47 CFR § 73.1745(a).

²⁵ See 47 U.S.C. § 301.

²⁶ 47 CFR § 1.80(g)(4).

²⁷ 47 U.S.C. § 504(a). See 47 CFR § 1.80(g)(5).

²⁸ 47 CFR § 1.80(i). Payments made using CORES do not require the submission of an FCC Form 159.

²⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁰ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.

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

9. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.³¹ 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.

10. **IT IS FURTHER ORDERED** that copies of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Castelli Media, LLC, 9925 Haynes Bridge Road, Suite 200-155, Alpharetta, GA 30022, as well as e-mailed to: castellimediasvegas@gmail.com and a copy mailed to: Dan J. Alpert, Esq, 2120 N. 21st Rd., Arlington, VA 22201 and e-mailed to: dja@commlaw.tv.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³¹ See 47 CFR § 1.1914.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information: 202-418-0500

Internet: www.fcc.gov

TTY: 888-835-5322

DA 24-379

Released: April 23, 2024

FCC ANNOUNCES FIRST TRIBAL CONSULTATION ON PROPOSED MISSING AND ENDANGERED PERSONS EMERGENCY ALERT SYSTEM CODE, IN WYANDOTTE, OKLAHOMA ON TUESDAY, MAY 14, 2024

By this Public Notice, the Federal Communications Commission (Commission) announces that it will convene its first Tribal consultation regarding a [Notice of Proposed Rulemaking](#) (NPRM), FCC 24-30, proposing that a new Missing and Endangered Person (MEP) event code be added to the nation's Emergency Alert System (EAS).¹ The NPRM was published in the Federal Register on April 18, 2024 announcing that public comments are due May 20, 2024 and reply comments are due June 17, 2024.² In the NPRM, the Commission directed its Office of Native Affairs and Policy (ONAP) to coordinate government-to-government consultation with Tribal Nations about the topics raised in the NPRM.³

In addition to the first in-person consultation announced herein, ONAP plans to hold a series of in-person regional consultations, as well as a national virtual consultation. ONAP will announce upcoming consultations for the MEP EAS NPRM on its webpage (<https://www.fcc.gov/office-native-affairs-and-policy>) and will email letters about consultation events to Tribal Nations from its Native@fcc.gov email address. If you have not yet signed up to receive emails from ONAP, please send a message to Native@fcc.gov and request to be added to ONAP's mailing list.

Details for MEP EAS NPRM Consultation in Wyandotte, OK on May 14:

The first Tribal consultation on the MEP EAS NPRM will be convened on Tuesday, May 14, 2024, at 2:00 PM Central Time in Wyandotte, Oklahoma, one day prior to the FCC's recently announced [Tribal Workshop](#) hosted by the Eastern Shawnee Tribe of Oklahoma on Wednesday, May 15, 2024. Both events will be held at the Indigo Sky Casino and Resort, 70220 East HWY 60, Wyandotte, OK 74370.

¹ *Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Notice of Proposed Rulemaking, FCC 24-30 (March 15, 2024) (*MEP EAS NPRM*).

² Federal Communications Commission, *The Emergency Alert System and Wireless Emergency Alerts*, Proposed Rule, 89 Fed. Reg. 27699 (April 18, 2024). See also <https://www.federalregister.gov/documents/2024/04/18/2024-08271/the-emergency-alert-system-and-wireless-emergency-alerts>.

³ *MEP EAS NPRM*, at 14, para. 37 (directing ONAP to coordinate government-to-government consultation with Tribal Nations about the topics raised in the NPRM and stating that ONAP will announce the commencement of Tribal consultation via public notice).

Registration for May 14th consultation:

All attendees must register to attend the consultation. To register or to ask any questions about the consultation, please send an email message with the subject line “May MEP EAS Consultation” to Tribal.Events@fcc.gov by Monday, May 13, 2024. This is an email in-box monitored by ONAP staff. In your message, provide the names, titles and Tribal affiliation of anyone attending. In providing Tribal affiliation, please provide the Tribe name, and specifically indicate whether the participant is an elected or appointed leader or duly appointed representative of the Tribe. If you cannot personally attend and wish to designate a proxy(ies), please specify who is authorized to speak on your behalf in the registration email. You are encouraged to bring public safety staff, information technology (IT) staff, and other interested representatives and personnel from your Nation to the Tribal consultation. If time permits, we may offer a listening session opportunity for those who are not Tribal leaders to ask questions and/or provide remarks after the consultation is concluded.

FCC ONAP’s Tribal Workshop on May 15:

We also encourage you to register for ONAP’s free Tribal Workshop on May 15. You may indicate in your request to attend the May 14 consultation described above that you plan to stay for ONAP’s Workshop on May 15 or you can register for the workshop separately by sending your name, title, Tribal affiliation, and contact information, with the subject line “May Workshop” to Tribal.Events@fcc.gov. Any questions about the workshop may be directed to: Jamie.Saloom@fcc.gov or Renee Coles, Renee.Coles@fcc.gov.

Reasonable accommodations for people with disabilities are available upon request by sending an e-mail to: FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice). Include a description of the accommodation you will need and tell us how to contact you if we need more information. Please make your request as early as possible as we may be unable to fulfill last minute requests.

-FCC-

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

In the Matter of	)	
	)	
Resilient Networks	)	PS Docket No. 21-346
	)	
Amendment to Part 4 of the Commission's Rules	)	PS Docket No. 15-80
Concerning Disruptions to Communications	)	
	)	
New Part 4 of the Commission's Rules Concerning	)	ET Docket No. 04-35
Disruptions to Communications	)	

ORDER GRANTING EXTENSION OF TIME

Adopted: April 22, 2024

Released: April 23, 2024

Revised Comment Date: May 13, 2024

Revised Reply Comment Date: June 12, 2024

By the Chief, Public Safety and Homeland Security Bureau:

1. On January 26, 2024, the Commission released a Second Report and Order and Second Further Notice of Proposed Rulemaking (*FNPRM*) in the above captioned proceeding to consider additional Network Outage Reporting System (NORS) and/or Disaster Information Reporting System (DIRS) reporting obligations for broadcast entities, satellite providers, FirstNet, and broadband Internet access service (BIAS) providers.¹ A summary of the *FNPRM* was published in the Federal Register on March 29, 2024, establishing the comment due date of April 29, 2024 and reply comment due date of May 29, 2024.² On April 16, 2024, five parties³ jointly requested a 14-day extension of the comment and reply comment deadlines (1) to allow interested parties sufficient time to review the Commission's order reclassifying broadband as a Title II service which is scheduled to be voted upon at the Commission's April 25, 2024 agenda meeting; and (2) to avoid conflict with the Passover holiday which falls over a large portion of the *FNPRM* comment period.⁴

2. We grant a 14-day extension of the time to file comments and reply comments in this proceeding to afford interested parties a full opportunity to consider the *FNPRM*'s proposed NORS and

¹ *Resilient Networks; Amendments of Part 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 and ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 24-5 (rel. Jan. 26, 2024) (*FNPRM*).

² Federal Communications Commission, *Amendments to Resilient Networks; Disruptions to Communications; New Considerations Concerning Disruptions to Communications*, 89 Fed. Reg. 22106 (Mar. 29, 2024).

³ Public Knowledge, the National Association of State Utility Consumer Advocates, New American's Open Technology Institute, The Utility Reform Network, and Communications Workers of America (Petitioners).

⁴ Motion for Extension of Time of Public Knowledge, the National Association of State Utility Consumer Advocates, New American's Open Technology Institute, The Utility Reform Network, and Communications Workers of America, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35 (filed Apr. 16, 2024), <https://www.fcc.gov/ecfs/document/104161365101056/1> (Petitioners' Request).

DIRS reporting obligations for BIAS providers in light of the draft *Open Internet Order*'s reclassification of broadband as a Title II service.⁵ It is the general policy of the Commission that extensions of time shall not be routinely granted.⁶ Petitioners observe that "[a] brief delay of two weeks will permit parties to review the [*Open Internet Order*], and reflect the legal authorities and discussion relating to network resiliency...."⁷ Based on the Petitioners' argument that the vote on the *Open Internet Order* is so close to the *FNPRM*'s current comment deadline of April 29, 2024 and overlaps with Passover, however, we conclude that the totality of the circumstances warrants a limited 14-day extension of the comment and reply deadlines to facilitate the development of a comprehensive record in this proceeding. Interested parties can use this time to develop complete, fully-supported comments and reply comments.

3. 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 0.204, 0.392, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.392, 1.46, the Motion for Extension of Time of Public Knowledge, the National Association of State Utility Consumer Advocates, New American's Open Technology Institute, The Utility Reform Network, and Communications Workers of America filed on April 16, 2024 **IS GRANTED** for the reasons described herein.

4. **IT IS FURTHER ORDERED** that the date for filing comments on the *FNPRM* **IS EXTENDED** to May 13, 2024, and the date for filing reply comments on the *FNPRM* **IS EXTENDED** to June 12, 2024.⁸

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau

⁵ See Press Release, FCC, FCC Announces Tentative Agenda for April Open Meeting (Apr. 4, 2024), <https://www.fcc.gov/document/fcc-announces-tentative-agenda-april-open-meeting-11>; *Safeguarding and Securing the Open Internet*; *Restoring Internet Freedom*, WC Docket Nos. 23-320 and 17-108, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC-CIRC2404-01 (rel. Apr. 4, 2024) (*Open Internet Order*).

⁶ See 47 CFR § 1.46(a).

⁷ Petitioners' Request at 2.

⁸ We note that the Petitioners' Request sought a 14-day extension of the reply comment due date until June 11, 2024. Petitioners' Request at 1, 3. However, given that 14 days after the current reply comment deadline of May 29, 2024 is June 12, 2024, we therefore establish June 12, 2024 as the new reply comment deadline.

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 23-380
Table of Allotments, Television Broadcast	)	RM-11968
Stations (Missoula, Montana)	)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 23, 2024

Released: April 23, 2024

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by Sinclair Media Licensee, LLC (Petitioner or Sinclair), the licensee of KECI-TV (Station or KECI-TV), channel 13, Missoula, Montana (Missoula).² The Station is currently operating on channel 13, and in 2021, the Bureau granted Sinclair's request to substitute UHF channel 20 for VHF channel 13 at Missoula in the Table of TV Allotments (Table).³ Sinclair currently holds a construction permit to modify its facility to operate on channel 20,⁴ and has petitioned for the substitution of channel 21 for channel 20 at Missoula in the Table. Sinclair filed comments in support of the petition, as required by the Commission's rules (rules),⁵ reaffirming its present intention to apply for a construction permit to build the Station's facilities on channel 21 and to promptly construct such facilities. No other comments were received.

2. We conclude that the public interest would be served by substituting channel 21 for channel 20 at Missoula. As explained in the Petition, at the same time Sinclair requested and was granted the substitution of channel 20 for channel 13 at Missoula, it also requested and was granted the substitution of UHF channel 20 for VHF channel 6 for co-owned station KTVM-TV, Butte, Montana (Butte).⁶ As a result, both KTVM-TV and KECI-TV would operate on a co-channel basis, and Sinclair

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 23-380, Notice of Proposed Rulemaking, DA 23-1053 (MB Nov. 7, 2023) (*NPRM*).

² Petition of Sinclair Media Licensee, LLC for Rulemaking (filed Aug. 16, 2023), LMS File No. 0000219405 (Petition).

³ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 21-176, Report and Order, 36 FCC Rcd 11180 (MB 2021) (*Channel 20 R&O*). On April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act, and the post-incentive auction transition period ended on July 13, 2020. At the time the *Channel 20 R&O* was issued, the Commission had not yet amended its rules to reflect all new full power channel assignments in a revised Table of Allotments. Accordingly, the *Channel 20 R&O* referred to the Post-Transition Table of DTV Allotments, 47 CFR § 73.622(i) (2018). The Commission has now adopted the new Table of TV Allotments, 47 CFR § 73.622(j), and this *Report and Order* amends the new rule. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Rcd 15891 (Oct. 25, 2021).

⁴ LMS File No. 0000156965, granted Mar. 21, 2022.

⁵ 47 CFR §§ 1.415, 1.419; see also *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

⁶ *NPRM* at para. 3.

had determined that predicted interference from both stations operating on channel 20 would affect less than 1 percent of the populations within the noise limited service contours (NLSC) of each station.⁷ When the Bureau granted the substitution of channel 20 for channel 13 at Missoula, it also found that the proposed channel 20 facility had a predicted service population of 227,295 persons, a net gain of potential viewers over the existing KECI-TV channel 13 facility.⁸

3. Sinclair now explains, however, that in preparing to construct the new facilities on channel 20 for both stations, its local engineering staff determined that despite the predictions, the actual interference consequences of both stations operating on channel 20 at Missoula and Butte would result in a more significant number of persons receiving interference, and that the interference would not be localized but spread throughout large portions of the KTVM-TV and KECI-TV service areas.⁹ An analysis provided by the Petitioner indicates that operation of KECI-TV on channel 21 instead of channel 13 would result in a net gain in persons within the Station's NLSC receiving interference-free service,¹⁰ as well as an increase in the population that would receive interference-free service if the Station were to remain on the currently-allotted channel 20.¹¹

4. We also find that the proposal complies with all relevant technical requirements for amendment of the Table of TV Allotments, including the interference protection requirements of section 73.622(a) of the rules, and further demonstrates that the proposed channel 21 facility will provide full principal community coverage to Missoula as required by section 73.618 of the rules.¹² Moreover, the proposed channel substitution would not cause any additional loss of service, which we have already found to be *de minimis*,¹³ will increase the population within both KECI-TV's and KTVM-TV's NLSCs that will receive interference-free service, and resolve co-channel interference issues caused by the stations' approved co-channel operation.¹⁴

5. As proposed, channel 21 can be substituted for channel 20 at Missoula in compliance with the principal community coverage requirements of section 73.618(a) of the rules,¹⁵ at coordinates 47-01'-04.0"

⁷ *Id.*

⁸ *Channel 20 R&O*, 36 FCC Rcd at 11181, para. 3. We also found that there would be a loss of service to approximately 65 persons, a number the Commission considers *de minimis*. *Id.*; see *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of approximately 556 persons is *de minimis*).

⁹ *NPRM* at para. 4.

¹⁰ Likewise, the analysis predicts that additional persons within the KTVM-TV NLSC would be able to receive interference-free service on channel 20 as a result of KECI-TV changing to channel 21 instead of channel 20. *Id.* at n.11.

¹¹ *Id.* at para. 4.

¹² See 47 CFR §§ 73.622(a) and 73.618 (formerly §§ 73.616(a) and 73.625(a), respectively). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations and the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. See *Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (MB Mar. 4, 2024); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

¹³ *Channel 20 R&O*, 36 FCC Rcd at 11181, para. 3.

¹⁴ A staff evaluation determined the net gain in service population between the channel 20 and channel 21 facilities would be approximately 5,510 persons.

¹⁵ 47 CFR § 73.618(a).

N. and 114-00'-50.0" W.¹⁶ In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the rules with the following specifications:¹⁷

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Missoula, Montana	21	950	610	232,805

6. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹⁸ An expedited effective date is necessary in this case to ensure that KECI-TV can operate with improved service to its viewers as quickly as possible.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r) and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal Register, the Table of TV Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Missoula, Montana	*11, 21, 23, 25

8. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Sinclair Media Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 21.

9. **IT IS FURTHER ORDERED**, That upon the filing of the minor change application specifying channel 21, the construction permit held by Sinclair Media Licensee, LLC for channel 20 (LMS File No. 0000156965) **SHALL BE CANCELLED**.

10. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

11. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-380 and RM-11968 **SHALL BE TERMINATED** and its docket closed.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ The proposed facility is located within the Canadian coordination zone and concurrence from the Canadian government has been obtained for this allotment.

¹⁷ 47 CFR §§ 73.622(a) (formerly §§ 73.616 and 73.623). See *supra* n.12 and *Part 73 Amendment R&O* at para. 40.

¹⁸ 5 U.S.C. § 553(d)(3).

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

In the Matter of	)	
	)	
Consent to Assign the License of WADL(TV),	)	LMS File No. 0000214896
Mount Clemens, Michigan, from Adell	)	Facility ID No. 455
Broadcasting Corporation to Mission Broadcasting,	)	
Inc.	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2024

Released: April 23, 2024

By the Chief, Media Bureau:

1. In this Order, we consider the above-captioned Application seeking consent to assign the television broadcast license of WADL(TV), Mount Clemens, Michigan (WADL or the Station) from Adell Broadcasting Corporation (Adell) to Mission Broadcasting, Inc. (Mission) (collectively, the Applicants). Two parties have filed informal objections to the proposed assignment of license alleging that Nexstar Media, Inc. (Nexstar) is either the real party in interest in this transaction or else will exercise control of the retransmission consent rights for the Station to the detriment of video programming distributors and consumers.¹

2. This Application presents a second instance in which Nexstar operates, or seeks to operate, a station licensed to Mission but located in a market outside of the contours of Nexstar's current national footprint. As Nexstar's national coverage is limited by the Commission's structural ownership rules, Nexstar is prohibited from owning these stations directly. In the first such situation, which involved WPIX(TV), New York, New York (WPIX), the Commission has issued a Notice of Apparent Liability concluding that Nexstar improperly exercised *de facto* control over the station, which resulted in Nexstar violating the National Ownership Cap.² The second such situation—WADL—is before us now and raises many of the same concerns at issue in the *WPIX NAL*. Accordingly, based on Nexstar's significant involvement with Mission generally and with this proposed Station acquisition specifically, we find it necessary to adopt conditions in order to safeguard the public interest, our rules, and the Communications Act of 1934, as amended (the Act).³ Our decision today is specific to this Application, and comports with long-standing Commission precedent of adopting conditions where a transfer application could result in public interest harms by substantially frustrating or impairing the objectives of our rules or statutes or might otherwise warrant designation for hearing. For the reasons discussed below, we find that grant of the Application with the conditions set forth below is in the public interest.

¹ Comments of the American Television Alliance (filed Jun. 20, 2023) (ATVA Informal Objection); Informal Objection of NCTA—The Internet & Television Association (filed Jun. 20, 2023) (NCTA Informal Objection).

² *Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY*, Notice of Apparent Liability for Forfeiture, FCC 24-34 (rel. Mar. 21, 2024) (*WPIX NAL*). Consistent with 47 U.S.C. § 504(c), we cite the issuance of the *WPIX NAL* solely for the factual record on which the Commission relied in issuing that NAL.

³ 47 U.S.C. § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly . . . except upon application to the Commission.”).

I. BACKGROUND

3. *The Transaction.* On May 17, 2023, Mission and Adell filed the Application, seeking consent to assign the license and station assets for WADL, which serves the Detroit Designated Market Area (DMA), for a purchase price of \$75 million.⁴ The station is affiliated with the MyNetwork TV network and is ranked seventh in the Detroit DMA in terms of advertising revenue.⁵ To finance the acquisition, the Transaction Description to the Application explains, without further elaboration or documentation: “Nexstar guarantees repayment of Mission’s bank financing. Mission may utilize its bank financing to pay for some or all of the purchase price for WADL.”⁶

4. The Application includes, among other documents, three draft contracts between Mission and Nexstar, which Mission indicates it intends to enter into upon consummation of the proposed assignment.⁷ The first is an agreement to sell commercial time, pursuant to which Nexstar will sell all advertising on WADL.⁸ This commercial sales agreement would authorize Nexstar to set all advertising rates, collect all revenues, and retain 30 percent of the revenues, paying Mission the remaining 70 percent of advertising revenue collected.⁹

5. The second agreement is a services agreement,¹⁰ under which Nexstar will provide certain services to Mission in connection with the operation of WADL, including execution of promotional policies; continuity and traffic support; master control; provision of payables support; financial services including preparation of monthly accounting services; transmission facilities maintenance; and contract negotiation.¹¹ Pursuant to the services agreement, in addition to the basic operations of the Station, Mission has also delegated to Nexstar authority to negotiate retransmission consent for the Station, as well as to collect all retransmission consent fees on behalf of the Station, if any, and remit such fees to Mission.¹² Under the terms of the services agreement, Mission would pay Nexstar a set monthly fee of \$155,500 for the provision of these services, as well as, potentially, an undefined “performance bonus.”¹³ The services agreement also states that senior management personnel and any programming services will otherwise not be shared between Mission and Nexstar.¹⁴

6. The third agreement contemplated by the parties is an Option Agreement¹⁵ allowing Nexstar to acquire the Station in the future. To exercise the option to purchase WADL, Nexstar would

⁴ Application Attach. Asset Purchase Agreement (APA) § 2.5. The Application was placed on public notice on May 19, 2023. See Public Notice, Report No. PN-1-230519-01 (rel. May 19, 2023).

⁵ Mission Consolidated Response to Objections at 2 (Mission Response) (stating that “the Station is an affiliate of MyNetworkTV with fewer than five full-time employees and no local news operation. It is the seventh-ranked television station in the Detroit DMA in terms of revenue and audience share.”).

⁶ Application Attach. Assignee’s Description of Transaction and Documents at 1 (Transaction Description).

⁷ See *id.*

⁸ Application Attach. Form of Agreement for the Sale of Commercial Time, “Agreement for the Sale of Commercial Time” (Agreement for Sale of Time).

⁹ Agreement for Sale of Time at 1-3.

¹⁰ Application Attach. Form of Station Services Agreement, “Station Services Agreement” (Services Agreement).

¹¹ *Id.* § 3(a)-(f), (h) at 2-3.

¹² *Id.* § 3(i) at 3.

¹³ *Id.* Sched. A Services Fee. The base Services Agreement amount will increase by three percent annually.

¹⁴ *Id.* § 1 at 1. However, the Agreement also provides that subject to Mission’s direction and control of Licensee, Nexstar “may upon [Mission’s] request assist [Mission] in procuring programming for broadcast on the Station.” *Id.* § 3(g) at 2.

¹⁵ Application Attach. Form of Option Agreement, “Option Agreement” (Option Agreement).

assume Mission's then-existing liabilities related to the ownership and operation of the Station and pay to Mission the greater of: (1) seven times the amount of the cash flow generated by the Station during the prior year, reduced by Mission's total outstanding indebtedness as of the date of the closing of the Option Agreement, or (2) Mission's outstanding indebtedness.¹⁶ The outstanding debt is termed "Existing Station Indebtedness," and is defined to mean the principal of and interest on all debt held or to be held by lenders under a specific 2017 credit agreement among Mission; Bank of America, N.A.; "and certain other parties thereto" (2017 Credit Agreement).¹⁷ This indebtedness appears to include all outstanding debt held by Mission and not simply the loan or loans used to acquire the Station.

7. The parties indicate that initially Nexstar will not provide programming to the Station, although the agreements contemplate that Nexstar would assist in procuring or producing programming for the Station should Mission so request.¹⁸ Further, the commercial sales agreement provides that Mission must maintain the same network affiliation that is in effect, unless Mission provides Nexstar with 90-days' notice of an affiliation change.¹⁹

8. On September 1, 2023, several months after the Application was filed, WADL began carrying programming from The CW Network, which is majority-owned by Nexstar.²⁰ In addition, on September 21, 2023, the Applicants filed an amendment to the Application, stating that they deleted a previous covenant in the APA under which Adell had agreed not to take or fail to take any action regarding the Station's carriage election, the result of which would be to elect "must carry" status for WADL for the next cycle from January 1, 2024 through December 31, 2026.²¹ Accordingly, rather than preserving the ability for Mission to seek retransmission consent fees during the 2024-2026 carriage cycle, the Station, still under Adell's control, elected must-carry rights for the 2023 carriage election.

9. On October 30, 2023, WADL announced that it had dropped The CW Network as the parties awaited FCC approval of the sale to Mission explaining that "transitionally," with the delay in regulatory approval, "the overall deal needed to be adjusted."²² As a result, Nexstar (as majority owner of The CW Network), transferred The CW Network programming to another station in the market, WMYD, owned by the E.W. Scripps Company, where that programming began airing on November 13, 2023.²³ At

¹⁶ Option § 2.1(b), "Definition of Cash Purchase Price," at 8.

¹⁷ *Id.*, Appendix, "Existing Station Indebtedness."

¹⁸ Services Agreement § 3(g) at 2-3.

¹⁹ Agreement for Sale of Time at 2. It is unclear whether this means the Station must maintain its present MyNetwork affiliation or some other future affiliation.

²⁰ Matthew Keys, *Nexstar quietly moves CW affiliation to Detroit's WADL* (Sep. 2, 2023), <https://thedesk.net/2023/09/nexstar-wadl-affiliation-cw-network/> (reporting that WADL began transmitting The CW Network programming in prime-time after The CW's former co-parent Paramount Global decided to drop the affiliation from another station in the Detroit market).

²¹ Application, Amendment to Asset Purchase Agreement (dated Sep. 14, 2023); Letter from Gregory L. Masters, counsel to Mission, and Coe W. Ramsey, counsel to Adell, to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 (dated Sep. 21, 2023) (Applicants Sep. 21, 2023 *Ex Parte* Letter). According to press reports, Adell indicated that WADL did not have an affiliation agreement with The CW Network, but agreed to air the network as an "accommodation" while the Application remained pending. Michael Malone, *WMYD Detroit Will Become Market's The CW Station* (Nov. 6, 2023), <https://www.nexttv.com/news/wmyd-detroit-will-become-markets-cw-station>.

²² Press Release, WADL-TV, Kevin Adell Removes CW Network in Detroit (Oct. 30, 2023), <https://www.prnewswire.com/news-releases/kevin-adell-removes-cw-network-in-detroit-301971471.html>.

²³ Press Release, Detroit's WMYD-TV To Become CW Affiliate On Monday, Nov. 13 (Nov. 6, 2023), <https://www.nexstar.tv/detroit-wmyd-to-become-cw-affiliate-nov-13/>.

this time, it is unclear whether the move of The CW Network programming to the Scripps station is transitional (i.e., only until this transaction closes) or permanent.²⁴

10. *The Proposed Assignee.* Mission, the proposed assignee of WADL, operates as a Variable Interest Entity (VIE) of Nexstar, a publicly traded company²⁵ that is the largest broadcast television station group in the country with a market capitalization of approximately \$5.5 billion and annual revenues of approximately \$5 billion.²⁶ The term VIE is an indication of the close relationship between the two entities.²⁷ In particular, Nexstar reports the revenue, assets, and financial information of the much smaller Mission²⁸ as part of its own financial calculations and reporting.²⁹ As a practical matter, the fact that Mission is a VIE means that it relies on its contractual relationships with Nexstar to such a degree that, Nexstar is considered to have a controlling financial interest in Mission for financial reporting purposes.³⁰

²⁴ Previously, The CW Network was affiliated with WKBD in Detroit, however, the owner of that station ended its affiliation in 2023 following Nexstar's acquisition of a controlling interest in the network. See Joe Otterson, *Eight CBS-Owned Stations to Drop CW Affiliation in September* (May 5, 2023), <https://variety.com/2023/tv/news/cbs-owned-stations-drop-cw-affiliations-september-1235604771/>.

²⁵ The company is publicly traded on the NASDAQ Global Select Market exchange under the symbol "NXST." The company reported that as of December 31, 2023, it had 13,294 employees, including 11,877 full-time employees. See Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 17 (filed Feb. 28, 2024) (reporting information for the fiscal year ending December 31, 2023) (Nexstar 10-K or Annual Report).

²⁶ Harry A. Jessel, *Updated Top 30 Station Groups: Nexstar Retains Top Spot, Gray Now No. 2 As FCC-Rejected Standard General Drops Off* (Aug. 14, 2023), <https://tvnewscheck.com/business/article/top-30-station-groups-nexstar-retains-top-spot-after-standard-general-teгна-deal-dies/>; see also Nexstar 10-K. According to Nexstar, it "owns, operates, programs or provides sales and other services to over 200 broadcast stations (including partner stations) and their related low power and digital multicast signals reaching 117 markets or more than 68% of all U.S. television households." Nexstar Media Group, Inc., Company Profile, <https://www.nexstar.tv/company/> (last visited Apr. 5, 2024). Nexstar also owns cable news network NewsNation, and a 75% controlling interest in The CW Network. Press Release, Nexstar Media Closes Acquisition of The CW Network (Oct. 3, 2022), <https://www.nexstar.tv/nexstar-closes-acquisition-of-the-cw-network/>.

²⁷ VIE status attaches where certain conditions exist, such as (1) where the total equity investment at risk is not sufficient to permit the entity at issue to finance its activities without additional subordinated financial support, or (2) the entity lacks the power to direct activities that most significantly impact its performance. Financial Accounting Standards Board, Accounting Standards Codification 810-10-15-14, <https://asc.fasb.org/1943274/2147481410/GUID-6558A531-EFBA-446C-A31D-A3D1D9D5BFA1> (last visited Apr. 5, 2024).

²⁸ Unlike the publicly traded Nexstar, Mission is a privately held company owned by two individuals, Nancie J. Smith, who holds 51% of the voting and equity stock of the company, and Dennis P. Thatcher, who holds the remaining 49% interest. See Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

²⁹ See, e.g., Nexstar 10-K at 41-45.

³⁰ As Nexstar explains in its 10-K Annual Report filed with the Securities and Exchange Commission (SEC):

Mission and the other consolidated VIEs are included in our Consolidated Financial Statements because we are deemed to have controlling financial interests in these entities as VIEs for financial reporting purposes as a result of (i) local service agreements we have with the stations they own, (ii) Nexstar's (excluding The CW) guarantee of the obligations incurred under Mission's senior secured credit facility, (iii) our power over significant activities affecting these entities' economic performance, including budgeting for advertising revenue, advertising sales and, in some cases, hiring and firing of sales force personnel and (iv) purchase options granted by each consolidated VIE which permit Nexstar to acquire the assets and assume the liabilities of all of these VIEs' stations at any time, subject to FCC consent. These purchase options are freely exercisable or assignable by Nexstar without consent or approval by the VIEs. These option

(continued....)

11. Notably, Nexstar is currently at, or even slightly above, the television station ownership limit set by the Commission's rules. The National Ownership Cap prohibits a single entity from owning television stations that, in the aggregate, reach more than 39% of the total television households in the United States.³¹ At present, Nexstar holds interests in stations that collectively are calculated to reach 39.2% of the total television households in the United States, including the UHF discount.³² This means that Nexstar cannot acquire television stations in any additional markets without first divesting itself of existing stations or obtaining a waiver of the rule. Similarly, Nexstar may not hold an attributable interest in such a station without first divesting itself of other stations or receiving a waiver of the rule.³³

12. As for the proposed assignee, Mission is currently the licensee of 29 full power television stations in 26 markets around the country, all of which are operated by, or in conjunction with, Nexstar.³⁴ In 25 of the 26 markets in which Mission operates, each company holds a license for at least one full power television station. Nexstar then operates the Mission station, performing various functions for the station, typically pursuant to a shared services agreement, a joint sales agreement, a local marketing agreement (LMA), or a combination of several such agreements.³⁵ At present, the only market in which

(Continued from previous page)

agreements expire on various dates between 2024 and 2033. We expect to renew these option agreements upon expiration. Therefore, these VIEs are consolidated into these financial statements.

Nexstar 10-K at 45. Nexstar explains further in its Annual Report that, "[i]n return for the services we provide, we receive substantially all of the consolidated VIEs' available cash, after satisfaction of their operating costs and any debt obligations." Nexstar 10-K at 23.

³¹ 47 CFR § 73.3555(e)(1); *see also Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213 (2016) (*UHF Discount Elimination Order*), *reconsidered in part*, Order on Reconsideration, 32 FCC Rcd 3390 (2017) (*UHF Discount Recon Order*), *pet. for rev. dismissed*, *Free Press et al. v. FCC*, No. 17-1179 (D.C. Cir 2018). In determining compliance with the 39% National Ownership Cap, stations broadcasting in the VHF spectrum are attributed with all television households in their DMAs, while UHF stations are attributed with only 50% of the households in their DMAs (known as the UHF discount). *UHF Discount Recon Order*, 32 FCC Rcd at 3391, para. 2. UHF stations are those that transmit on channel 14 and above. An entity or individual is deemed to hold an attributable interest in a licensee based on ownership interests, corporate positions, and contractual relationships that, in the Commission's long-standing experience, afford the interest holder the potential to influence the licensee to a significant degree. *See* 47 CFR § 73.3555, Note 2(i)(1)-(2); *see also infra* note 83.

³² *See generally* Nielsen 2023-2024 Universe Estimates DMA TV Households by Market Section. While the current nationwide reach calculated for Nexstar is slightly above the 39.0% cap, the Commission's rules do not penalize parties that exceed the national audience reach limitation through population growth. 47 CFR § 73.3555(e)(3).

³³ The attribution rules seek to identify ownership interests, corporate positions, and contractual relationships that, in the Commission's long-standing experience, afford the interest holder the potential to influence the licensee to a significant degree. 47 CFR § 73.3555, Note 2(i)(1)-(2).

³⁴ *See* Nexstar Media Group, Inc., Securities and Exchange Commission Quarterly Report (Form 10-Q) at 9 (filed Nov. 8, 2023) (reporting information for the fiscal year ending September 30, 2023 and indicating that Nexstar holds agreements pertaining to the operation of each of the Mission stations) (Nexstar 10-Q); *see also* Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

³⁵ Nexstar 10-Q at 9. In addition to relying on Nexstar to provide station sales, programming, and operational support to every one of its stations, Mission also relies on financial support from Nexstar. In particular, Nexstar guarantees full payment of all obligations incurred under Mission's senior secured credit facility, and Mission in turn guarantees Nexstar's senior secured credit facility and several of its outstanding debt instruments. Nexstar 10-K at 23, 43-44, and Note 8. Nexstar also holds options permitting it to acquire each of Mission's stations, subject to FCC consent. Nexstar 10-K at 43. Such options are freely exercisable or assignable by Nexstar without consent or approval by Mission. In addition, Nexstar also holds an option to buy all of the capital stock of Mission for the greater of: (1) five times (5x) the cashflow generated by the Mission stations in the preceding 12 months minus the company's outstanding debt, or (2) \$100,000. The parties originally entered into the option agreement in 2011 and subsequently amended it in 2021 to extend the agreement until November 2028. *See* Stock Option Agreement,

(continued....)

Mission owns a station but Nexstar does not is New York City, where Mission holds the license for WPIX, which Nexstar programs and operates in exchange for 100% of the revenue generated by the station.³⁶

13. The Commission has recently examined the close relationship between Mission and Nexstar in connection with the operation of television station WPIX licensed to Mission. In its *WPIX NAL*, the Commission found that Mission had apparently abdicated control of WPIX and that Nexstar had, in turn, apparently exercised *de facto* control over that station without prior Commission authorization.³⁷ Specifically, the Commission's preliminary findings were that Nexstar had exercised *de facto* control over WPIX by controlling the programming, personnel, and financing of the station, which, further, resulted in Nexstar breaching the National Ownership Cap.³⁸ Additionally, the Commission tentatively found on separate grounds that Nexstar held an attributable—and impermissible—interest in WPIX by virtue of its provision of programming to that station combined with its provision of a collateral interest for the loan by which Mission acquired the station.³⁹ Based on those facts and circumstances, the Commission asserted that Mission and Nexstar were each apparently liable for a significant monetary forfeiture, and that the parties would either need to divest themselves of WPIX or else Nexstar would need to acquire WPIX directly while divesting stations in other markets as necessary in order to maintain compliance with the National Ownership Cap.⁴⁰

14. *Pleadings.* The American Television Alliance (ATVA) and NCTA—The Internet and Television Association (NCTA) (collectively, Objectors) both filed informal objections to the Application. ATVA claims that Nexstar is using Mission to acquire the station and is intentionally avoiding acquiring WADL in its own name because doing so would violate the Commission's 39% National Ownership Cap.⁴¹ ATVA asserts that Nexstar, rather than Mission, is the real party in interest in acquiring WADL due to the combination of transaction documents and the overall Mission-Nexstar relationship. In support, ATVA points to the fact that Nexstar is guaranteeing Mission's financing for the transaction;⁴² selling all of the station's advertising;⁴³ likely to negotiate future retransmission consent for the station at higher rates, when bundled with Nexstar's other stations;⁴⁴ and circumventing the nominal reversion of Mission's 70% of advertising revenues through a highly unusual "Performance Bonus" in the services agreement.⁴⁵ ATVA questions in particular an Option price that ATVA interprets as potentially allowing Nexstar to acquire the station based on its existing guarantee of Mission's financing and with no

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<https://www.sec.gov/Archives/edgar/data/1142417/000114241712000010/missionoptionagmt.htm> (last visited Apr. 5, 2024); Amendment of Option Agreement, https://www.sec.gov/Archives/edgar/data/1142417/000156459021009747/nxst-ex104_14.htm (last visited Apr. 5, 2024); *see also* Mission Broadcasting, Biennial Ownership Report FCC File Number 0000165413.

³⁶ *See* Nexstar 10-K at 7-10.

³⁷ *WPIX NAL* at 11-26, paras. 22-52.

³⁸ *Id.* at 26-27, paras. 53-55.

³⁹ *Id.* at 27-30, paras. 56-58.

⁴⁰ *Id.* at 30-36, paras. 69-86.

⁴¹ Comments of the American Television Alliance (filed Jun. 20, 2023) at 1-3 (ATVA Informal Objection). The National Ownership Cap prohibits a single entity from owning television stations that, in the aggregate, reach more than 39% of the total television households in the United States. 47 CFR § 73.3555(e); *see UHF Discount Elimination Order*, 31 FCC Rcd 10213.

⁴² ATVA Informal Objection at 4-5.

⁴³ *Id.* at 5-6.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 6-7.

additional funds, as well as the restrictions in the Option that bar Mission from selling the station to a third party without Nexstar's consent.⁴⁶ ATVA goes on to cite Nexstar's inclusion of Mission as a VIE in Nexstar's filings before the SEC, and recognition in its SEC filings that it anticipates it will continue to receive substantially all of the consolidated VIEs' available cash, as probative that Nexstar is the real party in interest here.⁴⁷

15. For its part, NCTA asserts that while WADL is currently carried on Multichannel Video Programming Distributors (MVPDs) at no charge as a must-carry station in Detroit, it "appears highly likely – indeed, nearly certain" that Mission and Nexstar will include WADL with Nexstar's other retransmission consent contracts as an after-acquired station in its future negotiations with MVPDs.⁴⁸ According to NCTA, such a step would lead to a non-competitive increase in retransmission consent fees to the detriment of consumers, and thus would constitute a public interest harm.⁴⁹ NCTA seeks hearing designation for the Application, or a grant with conditions that include a prohibition on delegating retransmission consent negotiating authority to Nexstar; safeguards that the draft contracts are not used to circumvent the ban on joint retransmission consent negotiations among non-commonly owned same market stations; and robust reporting obligations.⁵⁰

16. In response, Mission asserts that the proposed transaction complies with all Commission rules and policies because the commercial sales agreement, sharing agreement, Option Agreement, the proposed delegation of retransmission consent authority, and the Nexstar loan guarantee have been expressly disclosed in the Application, are industry standard, and have been approved by the Commission in the past.⁵¹ Accordingly, Mission contends, there is no real-party-in-interest question. In particular, Mission argues that questioning the appropriateness of the "Performance Bonus" in the services agreement as being unusual is unwarranted, asserting that performance bonuses for an advertising broker are not uncommon in joint sales agreements.⁵² Further, Mission asserts that delegation to Nexstar of authority to negotiate retransmission consent for WADL does not violate any Commission rule, and that the Objectors expressly concede that point.⁵³ Mission also argues that Nexstar's status as a VIE is irrelevant because the Commission is not bound by the "control" definition of security law.⁵⁴ Lastly, Mission responds that the concern of harms due to increased retransmission fees are speculative, especially because WADL is currently a must-carry station, and because Mission is not privy to the details or operation of any after-acquired clauses.⁵⁵

17. Adell also responded to the objections, arguing that the proposed transaction is the result of years of work of the Kevin Adell family and investors,⁵⁶ and that the Objectors' claims are inconsistent with Commission precedent. Adell maintains that it has become increasingly challenging as a single station owner to operate WADL, and that Mission is well-suited to carry on the station's service to the

⁴⁶ *Id.* at 7-8.

⁴⁷ *Id.* (citations omitted).

⁴⁸ NCTA Informal Objection at 2-3, 6-9.

⁴⁹ *Id.* at 3-4, 5-9.

⁵⁰ *Id.* at 12-13.

⁵¹ Mission Response at 4-9.

⁵² *Id.* at 6.

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* at 11-16.

⁵⁶ Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of the American Television Alliance (filed Jul. 6, 2023) at 2-4 (Adell Consolidated Response).

local community.⁵⁷ Adell argues further that the Objectors are seeking to misuse the license transfer process to try to change Commission rules and policies.⁵⁸ The National Association of Broadcasters (NAB) opposes the NCTA Informal Objection on the basis that the issues raised by NCTA are more appropriately addressed by a rulemaking proceeding or by Congress (if at all).⁵⁹

18. ATVA advances three arguments in response to Mission, Adell, and NAB.⁶⁰ First, it asserts that ATVA is not seeking changes to Commission's rules and policies that require a rulemaking, but that the specific facts of the proposed transaction would grant Nexstar *de facto* control of WADL.⁶¹ Second, ATVA contends that Mission is incorrect in looking at whether each component of the transaction would comply with Commission rules, as the question is whether the totality of the arrangements and relationship between Nexstar and Mission grants Nexstar *de facto* control.⁶² Third, according to ATVA, NAB is wrong that the Commission lacks authority to consider retransmission consent in the merger context, as potential anticompetitive retail price increases are within the Commission's public interest review.⁶³ NCTA also responds on reply that the proposed transaction is not a "straightforward" one because of the retransmission consent negotiation delegation from Mission will allow Nexstar to extract artificially higher retransmission consent rates for WADL, and the structure of this transaction is similar to the fact pattern that led the Media Bureau to designate the Standard General/TEGNA transaction for a formal hearing.⁶⁴

19. In filing their Amendment to the Application on September 21, 2023, the Applicants state that they have elected to retain "must carry" status for the WADL for the next three-year election period, forgoing any legal right to seek retransmission consent revenues during that time. The Applicants argue that any retransmission consent-based objections of ATVA and NCTA have therefore been mooted.⁶⁵ ATVA responds that this filing does not change the fact that Nexstar is the real party in interest and its acquisition would cause a National Ownership Cap violation; that the concerns of a price increase are not confined to a three-year period; and that some MVPD agreements with Nexstar may nonetheless treat WADL as an "after-acquired" station, thereby forcing MVPDs and their Detroit customers to pay for the station immediately.⁶⁶ NCTA responds that the Applicants' must-carry election is a short-term "band-aid" that does not hide the fact that they have not deleted the critical provision in the sharing agreement that delegates negotiation authority to Nexstar, and that Applicants have not eliminated the possibility that they will later argue that after-acquired clauses in Nexstar's retransmission consent agreements would control and bring carriage of WADL under those rates.⁶⁷

⁵⁷ *Id.* at 3-4.

⁵⁸ *Id.* at 4-5.

⁵⁹ Opposition of the National Association of Broadcasters to Informal Objection of NCTA (filed Jul. 7, 2023) at 3-13 (NAB Opposition).

⁶⁰ Reply Comments of the American Television Alliance (filed Jul. 27, 2023) (ATVA Reply).

⁶¹ *Id.* at 2.

⁶² *Id.* at 2-3.

⁶³ *Id.* at 3-4.

⁶⁴ Reply Comments of NCTA—The Internet & Television Association (filed Aug. 1, 2023) at 1-4 (NCTA Reply) (citing *Applications of SGCI Holdings III LLC; TEGNA, Inc.; and CMG Media Corp.*, MB Docket No. 22-162, Hearing Designation Order, 38 FCC Rcd 1282 (MB 2023)).

⁶⁵ Applicants Sep. 21, 2021 *Ex Parte* Letter at 1-2.

⁶⁶ Letter from Michael Nilsson, Counsel to ATVA, to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 (dated Oct. 10, 2023) (ATVA Oct. 10, 2023 *Ex Parte* Letter).

⁶⁷ Letter from Rick Chessen, NCTA to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 at 2 (dated Oct. 18, 2023).

20. Adell and its supporters have filed multiple *ex parte* letters to express concerns about delay in processing the Application and the importance of the sale to shareholders of Adell, as well as to reiterate arguments made in prior pleadings.⁶⁸

II. DISCUSSION

21. Section 310(d) of the Act provides that no station license shall be transferred or assigned unless the Commission, on application, determines that the public interest, convenience, and necessity will be served thereby.⁶⁹ In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.⁷⁰ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.⁷¹ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.⁷² The Commission may also impose conditions that address the potential harms of a transaction.⁷³

22. We have reviewed the Application, pleadings, and information submitted by the Applicants, along with the arguments raised by the comments and informal objections, and we find that, on its face, the transaction does not violate any individual provision of the Act, other applicable statutes, and the Commission's rules. However, given the interwoven relationship between Mission and Nexstar, and the Commission's recent adoption of an Notice of Apparent Liability for Forfeiture that includes a divestiture in a similar situation involving these same parties, based on our review of the parties' agreements and the other relevant evidence in the record here, we find it necessary to impose several significant conditions on the approval of this transaction in order to protect the public interest and ensure that the operation of the agreements will continue to comply with the Act and the Commission's rules. Notably, we do not review the Application in a vacuum. As demonstrated by the actions of Nexstar and Mission following Mission's acquisition of WPIX, our concerns here go to how WADL could be operated after Mission's acquisition and the likelihood that Mission would abdicate control. Consistent with the Commission's recent action, we find that these conditions are essential in order to protect against the potential for a similar unauthorized *de facto* transfer of control and a potential violation of the

⁶⁸ See Letter from Kevin Adell, Owner/Operator WADL-TV, to Commissioners, FCC, LMS File No. 0000214896 (filed Nov. 20, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Dec. 11, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Dec. 18, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Jan. 20, 2023); see also Letter from Michael Nilsson, Counsel to ATVA, to Marlene Dortch, Secretary, FCC, LMS File No. 204896 (dated Jan. 22, 2024).

⁶⁹ Section 310(d) of the Act requires that the Commission consider an application as if the proposed assignee/transferee were applying for the license directly. 47 U.S.C. § 310(d); see also *SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005) (*SBC-AT&T Order*).

⁷⁰ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300, para. 16.

⁷¹ *Id.*

⁷² 47 U.S.C. § 309(e); see also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483, para. 15, n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*).

⁷³ 47 U.S.C. § 303(r).

National Ownership Cap in the present case. The prospective conditions we adopt today seek to guard against future infractions of the Commission's Rules and future harms to the public interest, including those potentially arising from the initial financing and acquisition of the Station. The conditions are tailored to the specific facts of the proposed, as-yet unfinanced transaction and the posture of the pending Application. Thus, the measures we adopt today would not be appropriate, or have the same impact, if imposed following a station acquisition.

23. Our decision today to grant the Application with conditions comports with long-standing Commission precedent. For example, in *Sinclair/Albritton*, the Bureau imposed conditions on the transaction in part based on the "extensive and longstanding past relationship" between the parties, which warranted assurances as to their competitive independence.⁷⁴ We reject Mission's argument that any conditions or concern about prospective violations can be dismissed out-of-hand as being unduly speculative.⁷⁵ As the Commission explained in taking similar prophylactic measures in *Sinclair/Glencairn*: "While we grant the [...] applications, we believe it appropriate to condition the grants upon certain changes being made to the agreements *to ensure that violations of our rules do not occur in the future*."⁷⁶ Moreover, Section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁷⁷

24. We find that the proposed assignment and operation of WADL shares a number of characteristics with the operation of WPIX that the Commission recently found to be problematic, and which we find to be problematic in this case. For example, in the *WPIX NAL* the Commission focused on the joint financing shared by Nexstar and Mission that had enabled Mission to acquire WPIX.⁷⁸ In that case, Mission purchased WPIX with Nexstar's assistance in the form of a line of financing shared by the two companies that Nexstar secured both by guaranteeing to repay the loan as well as providing collateral assets.⁷⁹ Based on the information provided in the Application, it appears that a similar financing coordination between Mission and Nexstar is involved in the acquisition of WADL. In addition, in the *WPIX NAL*, the Commission found it significant that Mission had abdicated control of the decisions regarding the station's retransmission consent rights to Nexstar, as well as forfeited those revenues to Nexstar.⁸⁰ This too is similar to the present situation where Mission has indicated its intention to delegate the ability to negotiate retransmission consent for the Station to Nexstar, along with the ability to collect

⁷⁴ *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156, 9168-69, para. 43 (MB 2014) (*Sinclair/Allbritton*).

⁷⁵ Mission Response at 3, 11-16.

⁷⁶ *Edwin L. Edwards, Sr., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22255-56, para. 3721 (2001) (emphasis added) (*Sinclair/Glencairn*). In *Sinclair/Glencairn*, the Commission concluded that a set of applications should be conditionally approved rather than designated for hearing provided that the applicants abide by certain conditions and amend certain agreements. *See also Shareholders of Ackerley Group, Inc., et al.*, Memorandum Opinion and Order, 17 FCC Rcd 10828, 10841, para. 33 (2002) (*Ackerley*) (concluding that because Ackerley was in violation of the local broadcast television multiple ownership rule, and grant of the KION(TV) transfer application would result in a further violation of that ownership rule, the Commission would "condition grant of the KION(TV) application upon removal of any contractual right or other arrangement that would result in the broker being entitled to advertising revenues not resulting solely from the 15% of programming provided under the TBA").

⁷⁷ 47 U.S.C. § 303(r).

⁷⁸ *WPIX NAL* at 28-29, paras. 60-67.

⁷⁹ *Id.*

⁸⁰ *Id.* at 24-25, paras. 47, 50-51.

the Station's retransmission consent revenues.⁸¹ And while the Station, under Adell's present control, has elected must-carry status for the current carriage election cycle, we find that this does not obviate the ability for Nexstar to control the retransmission consent decisions and revenue of the Station going forward, absent a condition to prevent such behavior.

25. Of further concern is the fact that Nexstar remains at, or even just above, the 39% National Ownership Cap.⁸² Accordingly, just as was the case with WPIX in New York, holding an attributable interest in WADL in Detroit, whether through the exercise of *de facto* control or potentially through an Equity Debt Plus (EDP) interest,⁸³ would result in Nexstar exceeding the National Ownership Cap.

26. We acknowledge that individually many of the agreements or relationships proposed in connection with the acquisition or operation of WADL are not, on their face, prohibited by our rules, and in many instances are similar to arrangements that, in other contexts, have been filed in connection with transfer applications that were ultimately approved. However, such agreements, behaviors, and relationships can become problematic in combination, particularly given the other entanglements between Mission and Nexstar, as the Commission just tentatively determined in the *WPIX NAL*. As the Bureau has noted previously when considering a combination of agreements that outsourced the operations of a broadcast station, "[d]etermining the full economic effects of these complex arrangements requires careful analysis, including review of the agreements and financial documents, to determine whether the arrangements together give the dominant station a level of operational and financial influence over the subordinate station such that we should treat the two as co-owned."⁸⁴ The Commission has just done

⁸¹ See Application Attach., Form of Station Services Agreement at 3. Although, as noted above, Nexstar would be obligated to remit retransmission consent revenue to Mission, other elements of the arrangement, including the undefined "performance bonus" through which Mission can compensate Nexstar, call into question the likelihood and extent to which Mission or WADL would retain or benefit from any such revenue.

⁸² See *supra* note 32 and accompanying text.

⁸³ The Commission's EDP rule addresses certain otherwise non-attributable interests that could allow the holder to exert significant influence over a licensee, and which are thus considered attributable. 47 CFR § 73.3555, Notes 2(a) & (i). Under the EDP rule, an entity that: (1) is a major program supplier (i.e., it provides programming constituting over 15% of the broadcast station's total weekly broadcast programming hours), and (2) holds an interest that exceeds 33% of the total assets of the licensee, aggregating both debt and equity holdings, will be deemed to hold an attributable interest in the station. The Commission adopted the EDP rule in part to address concerns raised that certain non-attributable investments, while permissible under the rules, might permit a degree of influence warranting their attribution. *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559, 12578-82, paras. 35-46 (1999). The rule was also adopted to address the concern that individually permissible cooperative arrangements between broadcasters were being combined to result in a degree of influence that the rules had intended to prohibit. *Promoting Diversification of Ownership in Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5932, para. 20 (2008) (stating that the "EDP rule is designed to resolve concerns that multiple non-attributable interests could be combined to allow the holders to exert significant influence over licensees such that these interests should be counted in applying the multiple ownership rules").

⁸⁴ *Sinclair/Albritton* at 9157, para. 3 (noting that transactions presented to the Commission for review increasingly feature complex combinations of sharing arrangements and financial ties such as options and loan guarantees linking stations that are asserted to be separately owned). Further, under Commission precedent, *de facto* control is determined by looking at the totality of the circumstances. See *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975); *SNR Wireless License Co., LLC, v. FCC*, 868 F.3d 1021, 1033-34 (D.C. Cir. 2017) (affirming Commission's "pragmatic application" of *de facto* control precedent, which transcends formulas and examines the facts and special circumstances presented in each case); *Northstar Wireless, LLC*, 35 FCC Rcd 13317, 13336, paras. 59-60 (2020) (Commission's "analysis involved not only a review of the contractual provisions on which the Applicants relied, but also an independent consideration of other contractual provisions and aspects of the relationships between the parties that were not clear from the face of the agreements").

precisely that in the *WPIX NAL*, carefully considering the combination of agreements and entanglements between Mission and Nexstar, and tentatively concluding that the parties violated the Commission's rules and the Act in several ways in connection with the operation of that station.⁸⁵ As the proposed assignment of WADL presents us with many similar agreements and relationships, we similarly find those agreements and relationships problematic, and find that the record compels us to follow this guidance; we therefore adopt conditions to protect against the possibility of a future violation. Moreover, because the concerns arise from the collective totality of the combination of agreements, we adopt conditions that, taken together, seek to address the collective effect of those agreements.

27. Therefore, as detailed further below, we find that based on the record before us as well as the recent behavior of Mission and Nexstar in New York and the Commission's tentative finding that the parties apparently engaged in an unauthorized transfer of control that resulted in a breach of the Commission's structural ownership rules, it is necessary to impose conditions to ensure that a similar unauthorized *de facto* transfer of control and potential violation of the National Ownership Cap does not occur in this case.⁸⁶ We find such conditions to be specific to the transaction because they pertain to the proposed assignee in this case, Mission, and the involvement by its much larger business partner, Nexstar, in the financing of the Station acquisition; in the potential programming and future operation of the Station; and in the creation, collection, and retention of revenue generated by the Station, both from commercial advertising time sold on the Station and from licensing the distribution rights for the Station. Accordingly, we find the conditions discussed below to be tailored specifically to the potential harms identified in this case and to the parties involved. We further find that it is appropriate to use conditions in this case to ensure the efficacy of our rules and the Act and to protect the public interest.⁸⁷

28. Finally, in concluding that the public interest will be served by a grant of the Application with the conditions discussed below, we find that the record does not present a substantial and material question of fact as to whether the transaction as conditioned serves the public interest as articulated in section 309(e).⁸⁸ Accordingly, we find that a hearing in this matter is not warranted. We emphasize, however, that without the conditions we are imposing, we would be unable to make that determination and would designate the application for hearing.⁸⁹

⁸⁵ *WPIX NAL* at 11, para. 21.

⁸⁶ See 47 U.S.C. § 303(r).

⁸⁷ The Commission's public interest authority enables it to impose and enforce transaction-related conditions, where appropriate, to ensure that the public interest is served by the transaction. See, e.g., *Altice N.V. & Cequel Corp. d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V.*, Memorandum Opinion and Order, 30 FCC Rcd 14352, 14356, para. 12 (MB 2015) (*Altice/Suddenlink*); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9141, para. 21 (2015); and *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998). Further, the Commission's "extensive regulatory and enforcement experience enables it, under this public interest authority, to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits." *Altice/Suddenlink* at 14356, para. 12.

⁸⁸ Under Section 309(d) of the Act, "[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity]," it must formally designate the application for a hearing in accordance with Section 309(e) of the Act. 47 U.S.C. §§ 309(d) and (e) (emphasis added). Courts have stated that, in reviewing the record, the Commission must designate an application for hearing if "the totality of the evidence arouses a sufficient doubt" as to whether grant of the application would serve the public interest. *Serafin v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (quoting *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985)).

⁸⁹ See 47 U.S.C. § 309(e). In this respect, we do not view these conditions as severable from one another and we intend for them to operate together to address the concerns we describe herein.

29. *Condition 1: Financing of Acquisition and Station Operation.* We find it necessary to impose conditions on Nexstar's financing the purchase, and ongoing operation, of the Station to ensure that Nexstar does not exert control over Mission, or otherwise violate the Commission's rules. The long-standing and intertwined financial relationship between Nexstar and Mission, most notably the undefined scope of all financial guarantees and covenants between the two, warrants a condition set forth below that prohibits Mission from relying on Nexstar's assistance with financing. With regard to the initial financing of the transaction, the record before us is problematically open-ended—the minimal, two-sentence description of financing arrangements in the Transaction Description is indefinite at best with regard to the degree of Nexstar's contribution towards the \$75 million purchase price, and even more unclear as to the specifics of the underlying financial relationship.⁹⁰ In the *WPIX NAL*, the Commission tentatively found that Mission's reliance on a joint line of credit, cross-guaranteed and collateralized by Nexstar, led to an impermissible attributable interest in the station being acquired, a breach of the National Ownership Cap, and an undue influence over the smaller entity, Mission.⁹¹ The *WPIX NAL* further questioned whether Mission's financial dependence on Nexstar, including its reliance on sharing agreements similar to those in place here, led the Commission to find that Nexstar is the apparent real party in interest.⁹² We have similar concerns here about the nature and extent of Mission's financial dependence on Nexstar, and the potential for misuse and influence resulting from that dependence. We therefore find that a condition barring Nexstar's involvement in Mission's financing is necessary and appropriate to guard against similar harms that could arise from the acquisition of WADL. We impose this condition of financial separation not only for the initial acquisition of the Station, but also on an ongoing basis to ensure that there is no improper control over the Station's future operations.

30. In imposing this condition, we give no weight to Mission's argument that a Bureau finding concerning the Nexstar-Mission relationship in 2008, over a decade and a half ago, necessarily inoculates Nexstar's participation in the financing of this proposed Station acquisition, including via any loan guarantee underlying the proposed transaction.⁹³ As an initial matter, in the *Nexstar-Mission Arkansas 2008 Order*, the Video Division did not specifically address the loan guarantee between Mission and Nexstar in the context of control, but rather considered and rejected the notion that such a guarantee was attributable under the Commission's rules.⁹⁴ Further, we are mindful that a prior approval of a similar arrangement does not eliminate the concerns with improper financial guarantees here. In particular, that earlier case makes no reference to which collateral or other security interest, if any, was provided by Nexstar to secure the loan. In light of the Commission's analysis in the *WPIX NAL*, the

⁹⁰ See *supra* para. 2.

⁹¹ *WPIX NAL* at 27-30, paras. 56-68.

⁹² *Id.* at 12, para. 24.

⁹³ Mission Response at 8 (citing *Applications for Assignment of License KFTA-TV, Fort Smith, Arkansas and KNWA-TV, Rogers, Arkansas*, Letter Order, 23 FCC Rcd 3528 (MB 2008) (*Nexstar-Mission Arkansas 2008 Order*)). Mission notes that in this 2008 decision the Bureau reaffirmed that "loan guarantees do not confer an interest upon the guarantor requiring attribution."

⁹⁴ In determining abdication of financial control, the Commission looks to determine whether a party other than the licensee has exerted actual control over the station, and not simply whether a third-party holds the ability to potentially influence the licensee's actions. Thus, the standard, and the Commission's calculation, is different from whether a party is simply attributable, which is a measure of the *potential* degree of influence, rather than a finding of actual control. Attribution of an ownership interest to an individual or entity represents the Commission's best judgment concerning when an interest is sufficient to confer on the owner a potential degree of influence over a licensee that should be cognizable for purposes of applying the Commission's broadcast ownership rules. See, e.g., *2014 Quadrennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835, 7836, para. 1 n.1 (MB 2014).

potential for a security interest contributing to an impermissible attributable interest in a station that exceeds the National Ownership Cap further justifies the imposition of this condition.

31. Accordingly, we impose the following condition: Any financing utilized by Mission in connection with either the acquisition of WADL or Mission's operation of the Station, including with regard to day-to-day operations, capital improvements, programming acquisition, or technical upgrades to the Station, may not involve Nexstar, its affiliates, its VIEs, or any related person or entity in any manner, including through the provision of such financing directly or indirectly, the guarantee of any loan or debt instrument sought or held by Mission, or the provision of collateral to secure a loan or debt instrument sought or held by Mission. For purposes of clarity, this includes the existing Credit Agreement, dated as of January 17, 2017, by and among Mission Broadcasting, Inc., as the borrower and Bank of America, N.A., as the administrative agent and the collateral agent and other financial institutions from time to time party thereto.

32. *Condition 2: Sale of Commercial Time.* Consistent with the draft terms of the proposed Agreement for Sale of Time on WADL, we adopt a condition requiring that Mission receive and retain no less than 70% of the Station's advertising revenue, as detailed below. In the *WPIX NAL*, the Commission was concerned that Mission retained little to no financial interest in the day-to-day success or failure of the station in that case.⁹⁵ In conjunction with the restrictions we impose today to prevent Nexstar's domination of Mission's financial operations, this condition on the sale of advertising time is essential to ensure that Mission retains an economic interest in the performance of the Station and the provision of service to address the needs and interests of the local community.⁹⁶

33. Accordingly we impose the following condition: In the event that Mission enters into an agreement with Nexstar, its affiliates, its VIEs, or any related persons or entities, either oral or written, that allows Nexstar, its affiliates, its VIEs, or any related person or entity to purchase, sell, and/or resell commercial advertising time on WADL or otherwise allows Nexstar, its affiliates, its VIEs or any related person or entity to sell commercial advertising time on the Station, Mission must receive and retain no less than 70% of the revenues generated by the sale of such commercial advertising time on WADL consistent with the draft agreement for the sale of commercial time submitted as part of the WADL assignment Application.

34. *Condition 3: Performance Bonus.* Similarly, to prevent the circumvention of the restrictions on Nexstar's potential domination of Mission's financial operation of the Station, we prohibit the use of a "Performance Bonus" or any other open-ended, discretionary payout from Mission to Nexstar. The draft of the proposed Services Agreement submitted with the Application allows Mission to pay to Nexstar a "Performance Bonus" in Mission's "sole and absolute discretion" on top of the \$155,500-per-month fee payable to Nexstar for the provision of various station services. The existence of such an undefined workaround to the proposed 70/30 split of advertising revenue in the Agreement for the Sale of Time and the absolute dollar figures elsewhere in the services agreements presents an unacceptable risk of an end run around our safeguards. This is particularly so where there is no governing

⁹⁵ *WPIX NAL* at 20-23, paras. 40-45.

⁹⁶ Previously, the Commission has found that a licensee's retention of the economic incentive to control programming aired over its station is a key element of retaining control of its license. See *Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (finding no economic incentive to control programming where broker programmed 15% of weekly broadcast hours and retained 100% of revenue under JSA); see also 2014 Quadrennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket Nos. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9850, para 105 (2017) (noting that with respect to agreements for the joint sale of advertising time (JSAs) by stations in the same market "[t]he record shows . . . that television JSAs generally rely on percentage fee arrangements in which the brokered station retains a substantial portion of the advertising revenue, which makes it substantially less likely that the brokered station's programming decisions would be significantly influenced by the brokering station.").

quantification or metric connected with such a Performance Bonus, other than the minimal guidance that such a bonus be determined in “good faith.”

35. We find wholly unpersuasive Nexstar’s defense of the “Performance Bonus” on the bases that (1) performance bonuses for the advertising seller are not uncommon in joint advertising sales agreements, and (2) Mission has complete discretion with regard to how much Mission would pay for the services that Nexstar provides.⁹⁷ In no scenario would a *services* agreement be the appropriate vessel for a discretionary bonus solely intended to reflect *advertising* sales, and the frequency of similar bonuses in contracts for the sale of advertising time does not support its inclusion in an extrinsic document. Indeed, the parties did not include the Performance Bonus in the Agreement for the Sale of Advertising Time but instead included it in the proposed Services Agreement. Moreover, as indicated above, unfettered discretion to devise a bonus devoid of any merit-based algorithm or guidelines would eviscerate any consistency with the 70/30 split of advertising revenue previously recognized by the Bureau as a useful indicator of broadcaster independence, and would allow Mission an impermissible backchannel to remit additional funds to Nexstar.

36. Although Mission operates as a VIE of the larger Nexstar enterprise, and Nexstar clearly states that it is entitled to all of Mission’s available cash after satisfaction of its operating costs and debt,⁹⁸ the Commission’s long-standing precedent expects that an independent, non-commonly owned licensee will retain control of its own station.⁹⁹ This includes financial control of the Station and a vested economic interest in the success or failure of the Station and, relatedly, in its provision of programming and service to the community. If Mission were to simply serve as an empty vehicle for Nexstar effectively to drain revenues from the Station, for instance through what is described on paper as a “Performance Bonus,” Mission would hardly be satisfying its fundamental role as an independent, non-commonly owned licensee. Accordingly, the conditions we impose today requiring that Mission receive 70% of the revenue derived from the sale of advertising time on the station and eliminating the amorphous “Performance Bonus,” serve to ensure that Mission retains a financial interest in the operation of the Station and, ultimately, control of its own station.

37. We therefore impose the following condition: In the event that Mission enters into an agreement with Nexstar, its affiliates, its VIEs, or any related person or entity: (a) pursuant to which Nexstar, its affiliates, its VIEs, or any related person or entity would provide certain services to Mission in connection with the operation of WADL such as execution of promotional policies; continuity and traffic support; master control; provision of payables support; financial services including preparation of monthly accounting services; transmission facilities maintenance; and contract negotiation; (b) for the purchase, sale, and/or resale of commercial advertising time on the Station; or (c) for the lease of

⁹⁷ Mission Opposition at 6.

⁹⁸ Nexstar 10-K at 23 (“In return for the services we provide, we receive substantially all of the consolidated VIEs’ available cash, after satisfaction of their operating costs and any debt obligations.”).

⁹⁹ 47 CFR § 73.3540; 47 U.S.C. § 310(d) (stating no “station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control... to any person except upon application to the Commission and a Commission finding that the public interest, convenience, and necessity will be served thereby”); *see also Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002) (stating the licensee must retain ultimate authority over the policies governing the programming, personnel, and finances at its station). Further, the Commission has held that a licensee’s retention of the economic incentive to control programming aired over its station is a key element of retaining control. *See e.g., Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (finding no economic incentive to control programming where broker programmed 15% of weekly broadcast hours and retained 100% of revenue under JSA); *Applications for Consent to Transfer Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16878, para. 28 (MB 2013) (noting that whether a licensee has the economic incentive to control its own programming is a key element of the Commission’s *de facto* transfer of control analysis).

programming time or the provision of programming through affiliation, production, or procurement, such an agreement, whether written or oral, may not contain any undefined “performance bonus” to be paid by Mission to Nexstar, its affiliates, its VIEs, or any related person or entity. Further, any agreement for the provision of station services in connection with the operation of WADL as described in (a) in the preceding sentence must be limited to a fixed fee of no greater than \$155,500 per month (plus 3% annual increase) as contemplated in the draft station services agreement submitted as part of the WADL assignment Application.

38. *Condition 4: Option.* The Commission tentatively concluded in the *WPIX NAL* that Nexstar had apparent *de facto* control of WPIX’s finances in part because Mission lacked any upside in the success of that station, with no long-term profitmaking potential pursuant to the programming agreement, Option, or unwritten and undisclosed retransmission consent practices in that case.¹⁰⁰ Consistent with that preliminary determination, we also impose as a condition on the grant of this Application a bar on Nexstar acquiring any option that would allow it the right to purchase the Station at a later date. This limitation is designed to ensure that Mission retains some economic incentive to improve the ownership and operation of the Station.

39. In reaching this decision, we find the exercise price of the Option Agreement, together with Mission’s inability to sell the Station to a third party without Nexstar’s consent, is particularly problematic with regard to creating any incentive for Mission to improve the value of the Station. As described above, in exchange for guaranteeing the loan used to acquire WADL, Mission intends to grant Nexstar the right to acquire the Station in the future. In order to so acquire the Station from Mission, Nexstar would assume Mission’s outstanding liabilities tied to the ownership and operation of the Station and also pay Mission the greater of either (1) seven times the cash flow generated by the Station in the preceding 12 months, less Mission’s outstanding indebtedness, or (2) Mission’s outstanding indebtedness.¹⁰¹ These terms, however, appear to fall far short of allowing Mission any ability to make a profit on the future sale of the Station, just as was the case in the *WPIX NAL*.

40. As an initial matter, although the debt that must be satisfied before Mission sees a profit is entitled “Existing Station Indebtedness” in the Option Agreement, there apparently is nothing necessarily Station-specific about it. Rather, such indebtedness appears to contemplate Mission’s collective outstanding debt at that future date, not simply the debt of WADL. Because the 2017 Credit Agreement referenced in the definition of Existing Station Indebtedness is seven years old and still available for Mission’s future operations and potential acquisitions, it is possible that this line of credit would contain more than the debt for WADL. Accordingly, while the first prong of the Option price has a traditional cash flow multiple figure, the full amount of that prong is not a realistic valuation but rather appears designed to create the appearance of a market rate, because in order for Mission to see a profit from the sale of WADL Nexstar would apparently have to pay the entire outstanding balance (principal plus interest) of the 2017 Credit Agreement. The total of this prong may even be negative, if the seven-time-cash-flow amount is anywhere near the current multiple of that cash flow. For example, if the 2017 Credit Agreement reflects just the financing for the initial acquisition of WADL, and that acquisition price is all or a large portion of the \$75 million purchase price, it would exceed the seven-times cash flow for the Station by a significant degree.

41. In addition, consistent with the argument raised by ATVA, we question whether the second prong of the Option price would lead to an effective payout of zero.¹⁰² Because Nexstar and Mission are co-guarantors of Mission’s bank financing, the “price” of paying off that financing would, in

¹⁰⁰ *WPIX NAL* at 20-21, para. 40.

¹⁰¹ See *supra* para. 6.

¹⁰² ATVA Informal Objection at 8 (asserting that the purchase price provision means that Nexstar can effectively purchase the Station for no additional funds, because the price is for amounts that it has already guaranteed, namely Mission’s senior secured credit facility).

practice, simply mean that instead of Nexstar and Mission being jointly subject to the repayment obligations, Mission would be removed as a debtor. Thus, Nexstar would not pay out any cash to Mission or be subject to additional loan obligations, but rather would just be subject to repayment of the loan it already guarantees.

42. We are unpersuaded by Mission's contention that the Option Agreement contains customary terms the Commission has reviewed and approved in numerous option agreements between Nexstar and Mission and, therefore, is not problematic in the present transaction.¹⁰³ Apart from the fact that the applications cited by Mission were (1) all filed more than 15 years ago, (2) for a fraction of the purchase price at issue here, and (3) unopposed (with one exception), any prior approval by the Bureau is heavily qualified by the fact that Nexstar was never disclosed as co-guarantor of the underlying debt in those cases.¹⁰⁴ Instead, the debt was defined in the Option Agreement under the term "Existing Station Indebtedness" as the principal and interest arising from and due to lenders under a Credit Agreement dated 1999, 2003 or 2005 among Mission Broadcasting, Inc.; Bank of America, N.A.; and certain other parties thereto, without identifying Nexstar as such a party. Virtually identical language is used here,¹⁰⁵ but in the different context of the express disclosure of Nexstar's guarantee to repay Mission's bank financing.¹⁰⁶ Moreover, based on the facts disclosed in the investigation of WPIX, more is now known about Nexstar's involvement in Mission's financing.

43. The fact that the Bureau implicitly approved those prior option agreements—but without any indication on the records before the Commission at that time that Nexstar may have been a party to those credit agreements—does not prevent the existence of the current Option (or any option) from removing Mission's economic incentives. Moreover, the combination of facts and circumstances in this case, combined with the record developed in the WPIX case, warrant a renewed and careful look at the various agreements and relationships between these two parties and ultimately require the prophylactic measures we adopt today.

44. Accordingly, we impose the following condition: Mission may not enter into an option agreement, either written or oral, that would allow Nexstar, its affiliates, its VIEs, or any related person or entity, to acquire WADL at a future date. Further, Mission may not enter into an agreement, either written or oral, that gives Nexstar, its affiliates, or its VIEs the right of first refusal to acquire the Station if Mission chooses to sell WADL in the future.

¹⁰³ Mission Opposition at 7-8 (citing File No. BALCT-20041012ABR (WTVQ(DT), Rockford, IL, Facility Id. No. 72945); File No. BALCT-20070705AAR (KTVE(DT), El Dorado, AR, Facility Id. No. 35692); File No. BALCT-20030519AEP (KAMC(DT), Lubbock, TX, Facility Id. No. 40820); File No. BALCT-20030519AET (KHMT(DT), Hardin, MT, Facility Id. No. 47670); BALCT-20030519AEQ (KOLR(DT), Springfield, MO, Facility Id. No. 28496); File No. BALCT-20030522AFE (WAWV-TV (formerly WBAK-TV), Terre Haute, IN, Facility Id. No. 65247); File No. BALCT-20031222ACA (WUTR(TV), Utica, NY, Facility Id. No. 57837); and File No. BALCDT-20121109ADH (WVNY(DT), Burlington, VT, Facility Id. No. 11259)).

¹⁰⁴ In the *Nexstar-Mission Arkansas 2008 Order*, the Bureau declined a petitioner's request to condition the grant on striking the option agreement, finding that the agreement's impact on the Nexstar and Mission relationship was "speculative." *Nexstar-Mission Arkansas 2008 Order*, 23 FCC Rcd at 3536. Here, however, additional evidence regarding the entanglements between, and actions by, Nexstar and Mission places the option agreement in a larger context and removes the need to speculate about its significance. Accordingly, because the record before the Bureau in the prior case did not reveal any cross-financing arrangements between Nexstar and Mission—if any existed—the Bureau's approval of the option in that decision is not determinative here.

¹⁰⁵ The Option defines "Existing Station Indebtedness" to mean the principal of and interest on all Indebtedness "existing or arising, due . . . to lenders under . . . the Credit Agreement dated as of January 17, 2017, among Mission Broadcasting, Inc., Bank of America, N.A., and certain other parties thereto . . ." Option Agreement, Appendix at 26.

¹⁰⁶ Transaction Description at 1 ("Nexstar guarantees repayment of Mission's bank financing. Mission may utilize its bank financing to pay for some or all of the purchase price for WADL.").

45. *Condition 5: Retransmission Consent Agreement Negotiation.* In the *WPIX NAL*, the Commission noted that “Mission’s unwritten delegation to Nexstar of the power to serve as the exclusive decisionmaker with regard to retransmission consent authority . . . as indicative of the usurpation by Nexstar of the financial and business affairs of WPIX.”¹⁰⁷ To avoid similar usurpation here, we also impose conditions as set forth below, barring Mission from delegating or outsourcing authority to Nexstar to conduct retransmission consent negotiations for WADL or to otherwise control the Station’s retransmission rights or revenue.

46. Although the Applicants have indicated that the Station has elected must-carry status for the current carriage election cycle (which runs through December 31, 2026), the conditions we adopt today will protect against negative implications of after-acquired clauses and whether, going forward, Nexstar might treat the Station as one of its own for future retransmission consent negotiations. In particular, these conditions are necessary to preserve Mission’s agency with regard to the Station’s finances and decision-making.¹⁰⁸

47. When added to Nexstar’s contractual involvement and options with Mission’s finances, operations, and programming, the inclusion in the services agreement of Mission’s delegation to Nexstar of the power to serve as the exclusive decisionmaker with regard to the Station’s retransmission consent rights raises questions as to whether Mission intends to or would otherwise effectively abdicate a key element of the Station’s financial and business affairs. As the Commission recognized in the *WPIX NAL*, retransmission consent negotiation confers authority to set the fee rate and conditions of carriage; resolve or not resolve often critical issues, such as rejecting an MVPD offer and, at impasse, imposing a blackout; designation as a primary channel or multicast; determination of the length of the retransmission consent contract; and right to renewal.¹⁰⁹

48. In crafting the condition to prevent inappropriate influence or disclosure of information from Mission to Nexstar in the course of retransmission negotiations, we are mindful of effective guardrails that the Commission has previously endorsed in approving a consent decree to remedy similar harms.¹¹⁰ Previously, the Commission has adopted conditions prohibiting the intentional, or even unintentional, sharing of information between parties in connection with retransmission consent negotiations.¹¹¹ While the basis for imposing such prophylactic measures is different here, the need to implement comprehensive and workable protections is similarly compelling.

49. Mission makes two arguments regarding why such delegation should not be a concern, neither of which resolve the potential real-party-in-interest concerns. First, Mission contends that such delegation is permissible because Nexstar owns no television stations in the Detroit DMA, and the Commission’s rules only bar joint negotiation by non-commonly owned stations where such stations are located in the same market.¹¹² We agree that the Commission’s rule regarding the negotiation of retransmission consent does not by its terms prohibit negotiation on behalf of a non-commonly owned station. However, the fact that the Commission’s rules do not prohibit negotiation by another broadcaster in an out-of-market situation does not confer insulation from real-party-in-interest questions. This is particularly important where delegation of these rights would be to the largest broadcaster in the country

¹⁰⁷ *WPIX NAL* at 24, para. 47.

¹⁰⁸ *Id.* at 24, para. 49.

¹⁰⁹ *Id.* at 24, para. 47.

¹¹⁰ See *Sinclair Broadcast Group*, File No. EB-IHD-16-00021748, Order, 35 FCC Rcd 5877 (2020) (adopting a consent decree); *Sinclair Broadcast Group*, File No. EB-IHD-16-00021748, Consent Decree, 35 FCC Rcd 5881, 5890-92, para. 20 (2020).

¹¹¹ *Id.*

¹¹² See Transaction Description at 1 n.1 (citing 47 CFR § 76.65(b)(1)(viii)).

who would otherwise be barred from acquiring a station in the Detroit market and may have plans to bundle its programming to secure a superior retransmission consent rate at some time in the future. Moreover, the conditions we impose today, in the shadow of the unwritten and apparently complete delegation of retransmission consent rights in New York, are necessary to ensure that Nexstar will not treat the station as its own, claiming it as an after-acquired Nexstar station subject to Nexstar's rate schedule and terms, with all revenue payable to Nexstar. This is not a situation involving a station engaging Nexstar to negotiate retransmission consent agreements on its behalf as might exist in a typical agency relationship. Rather, as shown by Mission's own emails and statements cited in the *WPIX NAL*, in delegating this authority to Nexstar Mission was essentially cut out from the process entirely.¹¹³ Thus, the condition we adopt here, which does not interfere in the retransmission consent marketplace as Mission contends, will ensure that Mission does not effectively cede its retransmission rights and station revenue to Nexstar and that it retains the ability to potentially profit from this important aspect of station operation.

50. Second, Mission asserts that its Must-Carry Amendment, under which Adell committed to retaining must-carry status for WADL for the January 1, 2024 – December 31, 2026 period, has mooted the Objectors' speculative concern of "harm" in the form of increased retransmission consent fees for the Station, because MVPDs will not be required to pay any such fees for the next three years.¹¹⁴ We agree with ATVA that simply confining Nexstar to a three-year waiting period before Nexstar could conceivably control the retransmission consent rights for the Station does not eliminate the concerns at issue here. Further, as the Objectors point out, MVPD agreements with Nexstar may nonetheless treat WADL as an "after-acquired" station upon consummation,¹¹⁵ and the short-term election of must-carry status would not moot a real-party-in-interest issue where Nexstar may assert retransmission consent negotiation authority for the Station.

51. Accordingly, we impose the following condition: With regard to the carriage of WADL by any MVPD, including but not limited to the negotiation of retransmission consent for the Station or collection of any revenues resulting from retransmission distribution, Mission may not delegate, outsource, surrender, or grant rights over any aspect of retransmission consent negotiations for WADL to Nexstar, its affiliates, its agents, its VIEs, or any related entities or persons. In addition, in negotiating future retransmission consent rights for the Station, Mission may not bundle the carriage rights for WADL, or allow the carriage rights for WADL to be bundled with, the carriage rights for any station owned, operated, or controlled by Nexstar, its affiliates, or its VIEs, whether in the Detroit market, or any other market, nor with any programming channel owned by Nexstar, its affiliates, or its VIEs, including The CW Network and NewsNation. Further, Mission may not coordinate with or otherwise share information regarding the retransmission of WADL with Nexstar, its affiliates, its agents, its VIEs, or any related entity or person. Specifically: (a) no Mission employee or agent may provide, directly or indirectly, a copy of any retransmission consent agreement involving the carriage of WADL, or any non-public information related to such an agreement, to any Nexstar employee or agent who is involved in any way in retransmission consent negotiations on behalf of Nexstar; and (b) Mission shall establish information controls that (1) prevent any Mission employee or agent from, intentionally or unintentionally, sharing physical or electronic copies of any retransmission consent agreement involving WADL, or any document containing non-public information related to such an agreement, with any Nexstar employee or agent, particularly those involved in any way in retransmission consent negotiations on behalf of Nexstar, and (2) prevent any Nexstar employee or agent who is involved in any way in retransmission consent negotiations on behalf of Nexstar from, intentionally or unintentionally, accessing physical or electronic copies of any retransmission consent agreement involving WADL, or any document

¹¹³ *WPIX NAL* at 25, para. 51.

¹¹⁴ Mission Sep. 21, 2023 *Ex Parte* Letter at 1.

¹¹⁵ ATVA Oct. 10, 2023 *Ex Parte* Letter at 1-2; NCTA Oct. 18, 2023 *Ex Parte* Letter at 2.

containing non-public information related to such an agreement. For purposes of clarity, the foregoing provisions limiting access to WADL retransmission consent agreements or non-public information related to such agreements shall not preclude access by Nexstar employees or agents who are not in any way involved in retransmission consent negotiations on behalf of Nexstar (who may include accounting personnel and auditors).

52. *Condition 6: Nexstar Programming on WADL.* We further condition our approval of the Application by limiting Nexstar's provision of programming on WADL to no more than 15% of the total programming time aired on the Station, including through any affiliation with The CW Network, NewsNation, or any other programming source that is majority-owned or controlled by Nexstar or its affiliates. Although the Applicants submit that initially Nexstar will not provide programming to the Station, as stated above, the agreements do recognize that upon Mission's request, Nexstar would assist in procuring or producing programming for the Station.

53. We find that such a condition would limit Nexstar's involvement in Mission's programming decisions for the Station and ensure that Mission retains a significant interest in the Station's performance. Based on the limited information in the record before us, and informed by the apparent EDP attribution issue that the Commission identified in the *WPIX NAL* case, imposing a 15% programming limit also ensures that Nexstar does not qualify as a major program supplier to the Station, and thereby precludes any concerns about EDP attribution in violation of the National Ownership Cap.¹¹⁶ This condition is especially important in light of the Commission's tentative finding in the *WPIX NAL* that Nexstar became attributable in WPIX pursuant to its provision of collateral security interest under the shared "Revolver" facility, which triggered the Commission's EDP rule.¹¹⁷ The condition we adopt today limiting the provision of programming to WADL obviates any potential concern for a similar breach of the EDP rule, and by extension, of the National Ownership Cap.

54. Accordingly, we impose the following condition: No more than 15% of the programming time aired on WADL may consist of programming provided by, procured from, or owned by Nexstar, its affiliates, or its VIEs. Accordingly, Mission may not lease time to, procure from, outsource to, or otherwise air programming owned, provided, produced, or procured by Nexstar, its affiliates, or its VIEs for more than 15% of WADL's programming time, including, but not limited to, by affiliation with The CW Network, NewsNation, or any other programming source majority-owned or controlled by Nexstar or its affiliates. For purposes of clarity, if WADL airs more than one channel of programming, this limitation shall apply to each channel or multicast stream of programming offered by the station, such that no more than 15% of the programming time on any one channel or multicast stream may consist of programming provided by, procured from, or owned by Nexstar, its affiliates, or its variable interest entities.

55. Accordingly, if you do not accept the conditions as set forth herein, we will proceed pursuant to Section 1.110 of the Rules by vacating the grant and setting the Application for hearing consistent with section 309(e) of the Communications Act.¹¹⁸

¹¹⁶ Under the EDP rule, an entity that holds an interest greater than 33% of the total assets of the licensee (aggregating both debt and equity holdings) and is also a major program supplier to the station will be deemed to hold an attributable interest in the licensee. 47 CFR § 73.3555, Note 2(i). The EDP rule also contains a second prong by which an entity can trigger the attribution rules, namely, if the party holding a 33% or greater EDP interest in a licensee also holds an attributable interest in another broadcast licensee in the same market. Because Nexstar is not the licensee of another station in the market, that prong is not relevant to this proceeding.

¹¹⁷ *WPIX NAL* at 28-30, paras. 62-67 (recognizing that both parties (Mission and Nexstar) had borrowing rights from a jointly secured pool of money under which each party was assigned an individual cross-collateralized credit limit, and that Nexstar had provided collateral as security for the loan).

¹¹⁸ 47 CFR § 1.110 ("Where the Commission without a hearing grants any application . . . with any privileges, terms, or conditions other than those requested . . . the action of the Commission shall be considered as a grant of such (continued....)

III. ORDERING CLAUSES

56. Accordingly, **IT IS ORDERED** that the informal objection filed by American Television Alliance **IS DENIED**.

57. **IT IS FURTHER ORDERED** that the informal objection filed by NCTA—The Internet & Television Association **IS DENIED IN PART** and **IS GRANTED IN PART**.

58. **IT IS FURTHER ORDERED** that the Application seeking consent to assign the television broadcast license of WADL(TV), Mount Clemens, Michigan from Adell Broadcasting Corporation to Mission Broadcasting, Inc., LMS File No. 0000214896, pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), **IS GRANTED**, subject to the conditions set forth in paragraphs 31, 33, 37, 44, 51, and 54, above.

59. These actions are taken pursuant to section 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and sections 4(i) and (j), 303(r), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

(Continued from previous page) _____
application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.”); see also Applications of KKR Assocs., L.P. (Transferor) & Sci Television, Inc. (Transferee) for Transfer of Control of Storer Communications, Inc., Decision, 2 FCC Rcd 7104, 7107, para. 20. (1987).



Federal Communications Commission
Washington, D.C. 20554

April 25, 2024

DA 24-384
In Reply Refer to:
1800B3-IB
Released April 25, 2024

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Re: KQCF(FM), Chiloquin, OR
Facility ID No: 176407
File Nos. 0000162427

Petition for Reconsideration

Dear Messrs. Servis and Martin:

The Media Bureau (Bureau) is considering a petition from Common Frequency, Inc. (CFI)¹ which seeks reconsideration of a January 2024 Letter Order.² The Bureau ruled therein that CFI's license for KQCF(FM), Chiloquin, Oregon (Station) terminated as a matter of law and, therefore, dismissed the referenced application for license renewal as moot. CFI argues that the Bureau erred in applying the license termination provisions of section 312(g) of the Communications Act of 1934, as amended (Act)³ to the Station's operation from an unlicensed location and in finding no grounds for reinstatement. For the reasons set forth below, we deny reconsideration.

Background

Section 312(g) provides that a broadcast station's license expires automatically as a matter of law if it fails to transmit broadcast signals for twelve consecutive months.⁴ Transmissions from an

¹ CFI, Petition for Reconsideration, Pleading No. 0000239553 (rec. Feb. 20, 2024) (Petition).

² Darrick Servis, Letter Order, DA 24-63 (Jan. 19, 2024) (Decision).

³ 47 CFR § 312(g).

⁴ *Id.* ("If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary..."). Section 312(g) is codified in the Commission's rules as 47 CFR § 73.1740(c) ("The license of any broadcasting station that fails to transmit

unauthorized location are not considered “broadcast signals” and, thus, are treated as equivalent to silence under section 312(g).⁵

The Station is a noncommercial educational (NCE) facility that was licensed to operate with an antenna attached to a tree in the yard of a residence (Licensed Site). Such an arrangement is uncommon but permissible if the licensee demonstrates compliance with the Commission’s rules (Rules) on RF radiation.⁶ In 2021, the owner of the Licensed Site sold the property and required CFI to vacate. CFI obtained Special Temporary Authority (STA) to operate temporarily from a site about 540 meters away, also from a tree.⁷ On November 1, 2022, when the STA was about to expire, CFI moved the antenna and began to operate from a different tree on a parcel adjacent to the Licensed Site. CFI purportedly believed that the Rules required no STA or other Commission consent for relocations of that smaller distance.

Language in section 73.1690(b) of the Rules, which governs modification of transmission systems, is central to this case.⁸ Under subsection (b)(1) of that Rule, a construction permit is required for any new tower structure except for an identical replacement at the exact same geographic coordinates.⁹ Similarly, under subsection (b)(2), a construction permit is required for any change in geographic coordinates.¹⁰ However, subsection (b)(2) contains an exemption where the purpose of a coordinate modification is to correct an error in coordinates by less than three seconds longitude and latitude (Three-Second Exemption).¹¹ CFI reportedly found section 73.1690(b)(2) confusing. Although CFI was moving to a new structure, not correcting the Station’s licensed coordinates, it interpreted the Three-Second Exemption as applicable because the licensed and modified sites were within three seconds latitude and longitude of each other. CFI operated from the new location until January 9, 2024 when, following receipt of a Bureau letter of inquiry,¹² it voluntarily removed the Station from the air while awaiting

broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.”).

⁵ See *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9, *aff’d sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (*Eagle*); *Absolute Broad., LLC*, Memorandum Opinion and Order, FCC 23-38, n.69 and cases cited therein (rel. May 17, 2023); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009).

⁶ See generally FCC Form 854, Instructions, Item 39 (identifying many different types of structures that can be used to support communications antennas); 47 CFR § 1.1307(b).

⁷ See File No. BSTA-20220425AAI (filed Apr. 25, 2022, granted May 9, 2022, and expired Nov. 5, 2022).

⁸ 47 CFR § 73.1690(b) (“The following changes may be made only after the grant of a construction permit application (1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates. (2) Any change in station geographic coordinates, including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude....”).

⁹ *Id.* § 73.1690(b)(1).

¹⁰ *Id.* § 73.1690(b)(2).

¹¹ *Id.*

¹² Letter of Inquiry (MB Nov. 20, 2023) (Inquiry); CFI, Response to Letter of Inquiry (Jan. 3, 2024). The Bureau inquired into the Station’s operations because it had been silent for considerable periods within the last license term and the location of/purported authority for any current operations was unclear. The Renewal Application identifies the following as periods of silence: August 10, 2016 to August 10, 2017, June 3, 2018 to June 3, 2019, and October 27, 2019 to October 27, 2020. Those periods of silence, representing about 34 percent of the license term, would have been relevant if the Bureau were to consider whether the Station met the criteria for license renewal. See Decision at 2, n.4. For example, the Bureau noted that Licensee’s extended periods of silence at other stations had

clarification.¹³

The Bureau's Decision rejected CFI's interpretation of the Three-Second Exemption and ruled that operations from the new site were unauthorized. Because the Station had operated solely from the unauthorized location from November 1, 2022 onward, the Bureau found that its license expired after 12 consecutive months, *i.e.*, on November 1, 2023.¹⁴ The Bureau reasoned that CFI had been required to obtain a construction permit under sections 73.1690(b)(1), which governs new structures,¹⁵ and 73.1690(b)(2), which governs new coordinates. The Bureau determined that CFI's reliance on the Three-Second Exemption was an error because that exemption pertains only to stations correcting the coordinates of their existing locations, such as those discovering an inadvertent surveying error. CFI was not correcting the coordinates of the Station's existing location but, rather, was moving to a new one. The Bureau stated that the inapplicability of the Three-Second Exemption to site moves is also evident from a parallel use of three-second language in section 73.1690(c)(11), which applies the exemption only where there is no change in location.¹⁶ The Bureau found no merit to CFI's contention that construction permit requirements for new antenna mounts apply only to man-made structures such as communications towers and that trees are exempt because they are neither "towers"¹⁷ nor newly "constructed."¹⁸ The Decision held that there is nothing about the nature of a tree that would subject it to different regulations or allow trees in different locations to be considered interchangeable.¹⁹

Finally, the Bureau observed that the Three-Second Exemption, even when applicable, merely condenses the Commission approval process from two steps to one. Ordinarily a licensee must: (1) apply

warranted short-term renewals of one-year instead of the standard eight-year license term. *Id.*, citing *Darrick Servis*, Letter Order, DA 24-5 (MB Jan. 3, 2024) (KCFH(FM), Two Harbors, CA). The Bureau also noted an inconsistency between CFI's assertion that it recently returned to the Station's Licensed Site and CFI's prior statements that the Licensed Site was no longer available.

¹³ See File No. 0000235039 (rec. Jan. 9, 2024) (request for authority to remain silent, describing reason for silence as a Bureau suggestion of "inadvertent out-of-compliance" with section 73.1690(b)(2) and stating that Licensee "awaits communication/direction").

¹⁴ See *supra* note 5.

¹⁵ Decision at 2, citing 47 CFR § 73.1690(b)(1).

¹⁶ 47 CFR § 73.1690(c)(11) (construction permit unnecessary for "[c]orrection of geographic coordinates where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude, provided there is no physical change in location and no other licensed parameters are changed").

¹⁷ The Bureau noted that Part 73 of the Rules does not define "tower structure" but that Part 17, which is applicable to communications structures including those associated with broadcast stations, uses and defines the term "antenna structure." Decision at 5. That term is defined as a structure that is constructed or used to transmit radio energy, or that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled. 47 CFR § 17.2(a).

¹⁸ Decision at 5. The Decision noted that section 73.1690 uses the term "new tower structure" rather than the longer phrase "new antenna support structure" because support structures other than traditional towers are uncommon for reasons based on engineering standards and practices. *Id.* The Bureau stated that, nevertheless, a tree used to hold a broadcast antenna for the first time is a new antenna support structure, and that new placement of an antenna in a tree is no different for licensing purposes than placement on a man-made tower at that location. *Id.*

¹⁹ The Decision stated that the Bureau needs to know the precise location of any structure upon which a broadcast antenna is mounted to ensure adequate interference protection to other stations and safety of air navigation. When a broadcaster applies for a construction permit, the Commission announces the application by public notice, thereby enabling potentially interested parties to comment on such matters.

for a construction permit; and then (2) apply for a modification of license upon completion. A licensee that qualifies for the Three-Second Exemption can skip the first step and proceed directly to the second step in which it demonstrates that operation from the corrected coordinates complies with applicable Rules such as those pertaining to protection from RF radiation. The Decision observed that CFI skipped both steps of the process entirely.²⁰

After determining that the Station's license terminated under section 312(g), the Bureau considered on its own motion whether there was any basis for reinstatement. Section 312(g) affords the Commission limited discretion to reinstate licenses when needed to promote "equity and fairness."²¹ The Commission has exercised that discretion only rarely, generally where station operations have been impacted by natural disasters or compelling circumstances of a similar magnitude beyond the licensee's control.²² The Bureau determined that the record of the instant proceeding contained no such support for reinstatement. The Bureau acknowledged that the Station was the sole radio station licensed to Chiloquin but noted that Chiloquin also received multiple radio signals licensed to other communities.

CFI now contends that the Bureau made several errors.²³ First, it argues that the Bureau's application of section 312(g) was "overbroad," "irrational," and "draconian" because the Station was not completely off-air or warehousing spectrum.²⁴ Rather, CFI emphasizes that it was providing service from a location relatively close to the Licensed Site, and did not receive any interference complaints.²⁵ Second, although CFI now concedes that its interpretation of the Three-Second Exemption was erroneous, it again maintains that the Rule's language is confusing and that CFI's interpretation was reasonable.²⁶ CFI also repeats its argument that stations using trees as support structures are not subject to rules pertaining to placement of communications equipment on man-made structures.²⁷ Finally, it makes a new argument for reinstatement—that the Station provided a second, noncommercial educational signal to its service area, which is home to a Native American population.

Discussion

The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.²⁸ Petitions for reconsideration which rely on facts not previously presented to the Commission may be granted only if the Commission determines that consideration is in the public interest.²⁹

²⁰ *Id.* at 4.

²¹ 47 U.S.C. § 312(g).

²² Decision at 6-7, n. 40 and cases cited therein.

²³ Petition at 1-2.

²⁴ *Id.* at 2, 6.

²⁵ *Id.* at 2-5.

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 5.

²⁸ See 47 CFR § 1.106(c)-(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

²⁹ See 47 CFR § 1.106(c)(2).

We affirm the Decision for the reasons stated therein. The Bureau appropriately applied section 312(g) to the Station's failure to operate from an authorized location. As CFI acknowledges, the Commission's position that transmissions from unauthorized sites are not "broadcast signals" for purposes of section 312(g) dates back to the 2008 *Eagle* case, which the U.S. Court of Appeals for the D.C. Circuit affirmed.³⁰ We do not accept CFI's contention that the instant proceeding warrants a different approach. Although, as CFI argues, its authorized and unauthorized transmitter locations are considerably closer to each other than those in *Eagle*,³¹ the Commission has applied section 312(g) consistently to locations of various distances, including those characterized as "nearby."³² As we stated in the Decision, the filing of applications for approval of site changes is important even for relatively short moves because the Bureau needs the opportunity to consider any resulting changes in spacing, compliance with international agreements, and terrain shielding.³³ We also reject CFI's argument that there should be special equities for antennas mounted on trees which, unlike those on man-made structures, must be located where they grow rather than where they can be built.³⁴ CFR's purported belief that the tree it selected was "close enough" to the Licensed Site to be rule-compliant³⁵ was erroneous, as we will discuss below in our analysis of section 73.1690(b).

Nor do we accept CFI's contention that *Eagle* has been superseded or modified by a subsequent Commission ruling.³⁶ That case, *Absolute*, found that transmissions using a two-bay rather than the licensed one-bay antenna, though unauthorized, were broadcast signals sufficient to avert the consequences of section 312(g). *Absolute* acknowledged *Eagle* and its progeny as the established, ongoing standard for failure to operate from an authorized site but found that the infractions in the two cases differed materially. Central to the Commission's distinguishing of *Absolute* from *Eagle* was that the broadcasts in *Absolute* originated from the correct, authorized site. *Absolute* did not establish any exception to the longstanding section 312(g) holdings applicable to unauthorized sites as discussed in *Eagle* and, thus, the Bureau continues, after *Absolute*, to rely upon *Eagle* when addressing operations

³⁰ Petition at 2-3, citing *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd sub nom.*, *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) (*Eagle*).

³¹ Petition at 3, 5. There was a distance of 229 miles between locations in *Eagle*.

³² See *Chinese Voice of Golden City v. FCC*, 2021 WL 6102191 (D.C. Cir. 2021) (transmissions from an unauthorized location two miles away did not constitute "broadcast signals" for purposes of § 312(g)); *Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 19-20 (D.C. Cir. 2018) (Mem.) (where station was authorized to "transmit broadcasts from only one specific location in Indianapolis" but transmitted instead from "nearby Beach Grove" the "transmissions from its unauthorized location in Beech Grove do not constitute 'broadcast signals' for purposes of § 312(g)").

³³ See Decision at 5, n.30, citing *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications*, Second Report and Order, 15 FCC Rcd 21649, 21667, para. 38 (2000) (*Streamlining*) (*de minimis* changes in a short-spacing context may raise technical or international issues appropriately considered in an application for construction permit). Cf. *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television*, Report and Order, FCC 23-25, paras. 40-41 (rel. Apr. 17, 2023) (modifying rules applicable to low power television stations to match those for full service stations in section 73.1690(b)(2) which "apply only to coordinate corrections and not to relocations"); *Amy Meredith*, Letter Order, 37 FCC Rcd 7266 (MB 2022), *recon. denied*, DA 22-1352 (MB rel. Dec. 22, 2022) (rejecting argument that construction 30 yards from permitted location was sufficiently close to satisfy requirements of original construction permit for FM translator under 47 CFR § 74.1254(b)(4)).

³⁴ See Petition at 5.

³⁵ See *id.*

³⁶ See *id.* at 4, citing *Absolute Broad., LLC*, FCC No. 23-38 (rel. May 17, 2023) (*Absolute*).

from unauthorized locations.³⁷

We find that a different outcome is not warranted based on CFI's mistaken interpretation of the Three-Second Exemption. As explained in the Decision and noted again above, the Three-Second Exemption provides a streamlined application process for correcting discrepancies in coordinates up to three seconds if later measurements indicate an error on a station's authorization. The exemption provides no authority to relocate physically or to forego the application process entirely. As the Bureau observed, the Three-Second Exemption only eliminates the need for construction permits; it does not provide any exception to the requirement to apply for a license modification. CFI's failure to apply for a construction permit and license modification potentially placed the public at risk because it operated without demonstrating that its modified facility complied with RF radiation requirements.³⁸

There is no merit to CFI's argument that the language of section 73.1690(b)(2), which contains the Three-Second Exemption, is confusing. CFI contends that it is plausible to read the Rule as providing, in the context of site moves, that "no application is necessary if the actual site is within three seconds of the authorized site."³⁹ We disagree. The scope and purpose of the Rule is evident from the language of the Rule itself, the history of its adoption, language of the immediately preceding subsection 73.1690(b)(1), and parallel three-second language in section 73.1690(c)(11). The Commission adopted the Three-Second Exemption more than 20 years ago and has applied it consistently only to coordinate corrections.⁴⁰ CFI's relocation is unrelated to the exemption's purpose of simplifying correction of inadvertent coordinate errors by use of a single license modification application⁴¹ rather than the longer two-step process previously in effect. CFI fails to cite any case law supporting its interpretation of section 73.1690(b)(2), and further fails to explain how its interpretation can be squared with the immediately preceding language of section 73.1690(b)(1), which requires submission and approval of a minor change application for all new structures "except for replacement of an existing tower with a new tower of identical height and geographic coordinates."⁴² Although CFI characterizes its situation as a case of first impression, the Bureau rejected a similar argument in the 2019 *Mooreville* proceeding.⁴³ There, a licensee argued that the coordinates of an unauthorized site were only slightly beyond three seconds from its authorized location and maintained that section 73.1690(b)(2) allows a three-second "tolerance" for site relocations. The Bureau ruled that there is no such tolerance, that the station's license had expired pursuant to section 312(g), and found no basis for reinstatement. The Bureau also noted that the licensee's decision to build at an unauthorized location was deliberate.⁴⁴ As in the instant case, the Bureau stated that section 73.1690(b)(2) pertains only to correction of errors in coordinates, such as

³⁷ See, e.g., *Omni Broad, LLC*, Letter Order, DA 23-1208 (MB rel. Dec. 28, 2023).

³⁸ Had CFI filed a license application without first obtaining a construction permit, the Bureau would have dismissed the application as premature. Such a dismissal would have alerted CFI to the need for a construction permit so that it could have obtained a permit or STA prior to section 312(g) termination.

³⁹ Petition at 6.

⁴⁰ The Decision noted that section 73.1690(b)(2) originally required construction permits for "Any change in station geographic coordinates, including coordinate corrections." Decision at 4, n.29, citing *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12435, 12405-06 (1997). The Commission later added the language at issue to exempt corrections of three seconds or less. See *Streamlining*, 15 FCC Rcd at 21667, paras. 34-35.

⁴¹ See 47 CFR §§ 73.1690(b)(2), 73.1690(c)(11).

⁴² 47 CFR § 73.1690(b)(2).

⁴³ See *DW243AP, Mooreville, AL*, Letter Order, 34 FCC Rcd 6202 (MB 2019), cited in *Absolute* at para. 19, n.68.

⁴⁴ *Id.* at 6205.

where subsequent measurements find a discrepancy.⁴⁵

Nor do we find any merit to CFI's argument that its inability to avail itself of the Three-Second Exemption amounts to disparate treatment.⁴⁶ CFI considers its own situation similar to that of licensees that are able to use the Three-Second Exemption, emphasizing that each lacks a construction permit, is operating from a location within three seconds of licensed coordinates, is not causing interference, and has no intent to warehouse spectrum.⁴⁷ CFI, thus, believes that its own license should not terminate while the licensees to which it compares itself can make corrections. We acknowledge the well-established principle that the Commission may not, without adequate explanation, treat similarly-situated applicants differently.⁴⁸ CFI, however, is comparing dissimilar situations. A licensee that consciously moves away from its licensed site is unlike one making a correction to remain at its existing site after discovering that the license contains an inadvertent coordinate error. The Rules appropriately provide greater flexibility to correction of inadvertent mistakes than to conscious decisions to relocate, especially where, as here, a station is moving from a location known to be rule-compliant to one for which the licensee has not provided the Commission any information.

Finally, we find that CFI's arguments for reinstatement of the Station's license are procedurally defective and/or without merit. As stated above, newly-raised factors are not appropriately raised on reconsideration absent a public interest need.⁴⁹ Accordingly, we dismiss CFI's new argument that the Chiloquin area would lose its second NCE signal if the Bureau does not reinstate the Station's license. CFI does not provide an adequate public interest need for considering this argument, which was not before the Bureau at the time of the Decision.⁵⁰ As CFI recognizes,⁵¹ levels of NCE service are generally relevant when the Commission compares proposals to bring new NCE service to different communities. In that context, the Commission conducts a threshold analysis under section 307(b) of the Act, which requires fair distribution of radio service among communities.⁵² Such an analysis is inapplicable here, where the Bureau is not comparing the relative merits of two or more new service proposals for different communities. Moreover, a station's provision of a first or second NCE service is neither an exemption from rule compliance nor a basis for reinstatement under section 312(g). Similarly, we find an insufficient public interest basis in CFI's contention that failure to reinstate will result in loss of programming for Native Americans, and thereby "negatively impact the civic and cultural life of this minority community."⁵³ At the time of the Decision, the Bureau was aware of, but did not specifically

⁴⁵ *Id.*

⁴⁶ See Petition at 6.

⁴⁷ *Id.*

⁴⁸ See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

⁴⁹ See *supra*, note 29, citing 47 CFR § 1.106(c)(2).

⁵⁰ See Petition at 7. CFI recognizes that another applicant could apply for the spectrum in a future NCE window but argues that such a window may not occur in the foreseeable future. *Id.*

⁵¹ *Id.*

⁵² 47 U.S.C. § 307(b). Accordingly, if the Commission receives mutually exclusive proposals, one seeking a new license in a community that already has two or more NCE signals and the other in a community where a significant portion of the population is without that level of NCE service, the Commission prefers the latter. See 47 CFR § 73.7002 (level of NCE service considered in threshold analysis of applications for new NCE stations proposing service to different communities); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, 6705 (2003) (level of NCE service considered in determining whether to reserve spectrum in the non-reserved FM band for NCE use).

⁵³ Petition at 8.

address, CFI's claimed service to Native Americans.⁵⁴ While the Commission has recognized benefits of programming to minority populations, it has stated that such benefits do not outweigh the Commission's statutory responsibility to prevent unauthorized broadcasts.⁵⁵ The amount of weight to be given to this factor in the instant proceeding is further diminished by the fact that the Station was off-air for more than one-third of the last license term, making its history of service to Native Americans sporadic, at best.

Conclusion

Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Common Frequency, Inc., Pleading File No. 0000239553, IS DISMISSED IN PART to the extent that it makes new arguments for license reinstatement AND IS DENIED in all other respects.

It is FURTHER ORDERED that the January 19, 2024 decision finding that the license for KQCF(FM), Chiloquin, Oregon cancelled automatically pursuant to section 312(g) of the Act, deleting the call sign, and dismissing its application for license renewal, File No. 0000162427, as moot IS AFFIRMED.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Todd Urick (todd@commonfrequency.org)
(Technical Representative for Common Frequency, Inc.)

⁵⁴ The Inquiry asked for more information about CFI's statements in requests to remain silent that the Station provides programming to Native Americans. In response, CFI reported that, when operating, it aired several informational programs aimed at Native American audiences.

⁵⁵ *Found. For a Beautiful Life*, Memorandum Opinion and Order, 36 FCC Rcd 15933, 15949, para.24 (2021).

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

In the Matter of	)	
	)	
Wireless Emergency Alerts	)	PS Docket No. 15-91
	)	
Amendments to Part 11 of the Commission's Rules	)	
Regarding the Emergency Alert System	)	PS Docket No. 15-94

ORDER

Adopted: April 24, 2024

Released: April 24, 2024

By the Deputy Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) grants the waiver request submitted by Alert SouthBay, a regional alert and warning program encompassing fifteen cities in the South Bay region of Los Angeles County, California.¹ Alert SouthBay requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers² to participate in an end-to-end WEA test received by the public by default, scheduled for May 7, 2024, at 11:30 a.m. Pacific Standard Time (PST).³

2. Based on the circumstances discussed below, we find that waiver of the Commission's rules would serve the public interest. Accordingly, we grant the Alert SouthBay's waiver request to conduct an end-to-end WEA test using a WEA alert category that is received by the public by default, i.e., either an Imminent Threat Alert or a Public Safety Message, as outlined in Section 10.400 of the Commission's WEA rules.⁴ The WEA will be broadcast throughout the Alert SouthBay area, subject to certain conditions.

II. BACKGROUND

3. WEA allows authorized government entities to send geographically-targeted emergency

¹ See Letter from Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, to Federal Communications Commission at 1 (Apr. 9, 2024) (on file in Docket Nos. 15-91 and 15-94) (Alert SouthBay April Waiver Request). The fifteen cities in the program are the Cities of Inglewood, El Segundo, Manhattan Beach, Hermosa Beach, Redondo Beach, Torrance, Hawthorne, Gardena, Lomita, Lawndale, Carson, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills, and Rolling Hills Estates. Alert SouthBay April Waiver Request at 1; *see also* Letter from Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, to Federal Communications Commission at 1 (Jan. 8, 2024) (on file in Docket Nos. 15-91 and 15-94) (Alert SouthBay January Waiver Request).

² Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. *See* 47 CFR § 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission's rules. *See generally* 47 CFR § 10.1, *et seq.*

³ Alert SouthBay April Waiver Request at 1.

⁴ *See* 47 CFR § 10.400 (b), (d).

alerts to commercial wireless subscribers who have WEA-capable mobile devices,⁵ and whose commercial mobile service providers are Participating CMS Providers.⁶ The Commission's current rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁷ The Commission's current rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.⁸ State/Local WEA Tests differ from actual WEAs in the following ways: Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.⁹ Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.¹⁰ As of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Test category do not need to request a waiver from the Commission to permit WEA test alerts using the State/Local WEA Test category to be transmitted to the public.¹¹

4. On October 19, 2023, the Commission adopted rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default.¹² Under these adopted rules, in advance of conducting such a "WEA Performance and Public Awareness Test," an alerting authority must do the following: 1) conduct outreach and notify the public in advance of the planned WEA test and that no emergency is, in fact, occurring; 2) include in its test message that the alert is "only a test"; 3) coordinate the test among Participating CMS Providers that serve the geographic area targeted by the test, state, local, and Tribal emergency authorities, relevant State Emergency Communications Committees (SECCs), and first responder organizations; and 4) provide notification to the public in widely accessible formats that the test

⁵ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Second Report and Order and Second Order on Reconsideration, 33 FCC Rcd 1320, 1324, para. 6 (2018) (*WEA 2018 Second R&O*) ("We require Participating CMS Providers to deliver Alert Messages to an area that matches the target area specified by alert originators"); see also 47 CFR § 10.450(a).

⁶ See 47 CFR § 10.210 (requiring CMS providers to notify the Commission whether they are electing to transmit WEA Alert Messages).

⁷ 47 CFR § 10.520(d). The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. Compare 47 CFR § 10.520 with 47 CFR § 11.31(a)(2). On October 19, 2023, the Commission adopted an order that requires "Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default." *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Third Report and Order, FCC 23-88, 2023 WL 8543463, at *13, para. 35 (2023) (*2023 WEA Accessibility Report and Order*) (adopting rules to allow WEA Performance and Public Awareness Testing). This rule, however, has not yet become effective. See *2023 WEA Accessibility Report and Order*, at *15, *25, paras. 40, 74.

⁸ 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency Management Agency and in periodic tests of WEA's C-Interface. *Id.* On November 1, 2016, the Commission adopted a Report and Order that amended the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public to assess how WEA is working within their jurisdictions. See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

⁹ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

¹⁰ *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

¹¹ *Id.*

¹² See *2023 WEA Accessibility Report and Order*, at *13-*15, paras. 35-40.

is only a test and is not a warning about an actual emergency.¹³ These rules will become effective within 30 days of the Federal Register's publication of notice that OMB has completed its review of the 2023 *WEA Accessibility Report and Order's* information collection requirements.¹⁴

5. Alert SouthBay requests waiver of the Commission's rules to allow Participating CMS Providers to participate in a proposed end-to-end WEA test, which will be received by the public by default. The geographic area in which the test will take place is located along the southern California coastline and surrounded by five oil refineries.¹⁵ According to Alert SouthBay, significant land movement in this area has necessitated the evacuation of 20 homes, with another 300 homes are in areas that could warrant evacuation at any time.¹⁶

6. Earlier this year, on January 9, 2024, Alert SouthBay conducted a regional WEA test in this same area.¹⁷ In doing so, however, they discovered a number of shortcomings. The purpose of this second regional test is to understand the causes of these shortcomings.¹⁸ These shortcomings included "difficulties in disseminating alerts to all cellular devices, challenges with hyperlink functionality, and cellular carriers' failure to push the alert to devices."¹⁹ According to Alert SouthBay, "The failure of the cellular carriers to transmit the alert to devices highlights the crucial need for a [second] live WEA test."²⁰

7. The Alert SouthBay April Waiver Request describes the community outreach it is doing. They have prepared a press release about the test for distribution forthcoming city council meetings; disseminated details on their social media page, as well as with each city's social media pages; and, they will circulate information to various stakeholders, including participating cities, local law enforcement, and fire departments, the Los Angeles County Office of Emergency Management, as well as other regional and county entities.²¹ Alert SouthBay also represents that local papers will provide featured coverage of the test.²² They also will alert their community subscribers, including NIXLE customers, to provide additional details about the upcoming test.²³

8. Alert SouthBay will send a 360- and 90-character length WEA test message, in both English and Spanish.²⁴ All four versions of the alert will indicate that the alert is from Alert SouthBay, that the message is only a test, that no further action is needed, and will include a hyperlink.²⁵

¹³ *Id.* at *13, para. 35.

¹⁴ *Id.* at *15, para. 40.

¹⁵ Alert SouthBay April Waiver Request at 1.

¹⁶ *Id.* at 1-2.

¹⁷ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Order, DA 24-21, 2024 WL 124226 (PSHSB Jan. 9, 2024) (*Alert SouthBay January Waiver Grant Order*).

¹⁸ Alert SouthBay April Waiver Request at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.*

²⁴ Phone conversation between Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, and David Kirschner, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission (Apr. 23, 2024) (Sutherlin/Kirschner Call).

²⁵ Sutherlin/Kirschner Call.

III. DISCUSSION

9. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."²⁶ The Commission may find good cause to extend a waiver, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."²⁷ We conclude that there is good cause to grant Alert SouthBay's waiver request to conduct a second end-to-end WEA test received by the public by default, as described in its request.

10. We are persuaded it is in the public interest to allow Alert SouthBay to conduct a second test of WEA's performance in the communities it serves. It is in the public interest for Alert SouthBay to determine if the shortcomings it witnessed during its first WEA test on January 9, 2024, were anomalous, due to errors/issues that have been resolved, or are reflective of WEA performance in its area. It is in the public interest for Alert SouthBay to understand how WEA performs over the variety of geographic and demographic conditions in its area, especially considering the land movement that occur in parts of the areas it serves. We are persuaded that testing WEA in the Alert SouthBay area will help Alert SouthBay to achieve its goals of accurately evaluating WEA performance issues and determining appropriate solutions.²⁸ Doing so is consistent with the Commission's recent determination that Participating CMS Providers support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default.²⁹

11. We recognize, however, the test would not be in the public interest if it is presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public. In reaching our decision, we have taken into consideration the extensive outreach plan that Alert SouthBay has implemented, as described in the Alert SouthBay April Waiver Request, including both public engagement and coordination with other emergency managers and local agencies.

12. We condition this waiver to require that the test may only be conducted at the time and date specified in the Alert SouthBay April Waiver Request and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

- (1) this regional test is necessary to ensure that WEA continues to be an effective way to warn the public about regional emergencies;
- (2) Alert SouthBay will coordinate information about the test with relevant Participating CMS Providers, as well as first responder organizations such as police and fire agencies and 911 call centers, to ensure that they are aware of the test and can confirm to the public that the WEA messages are a test; and
- (3) the WEA test is not intended as a substitute for other scheduled WEA tests.

13. We also require that the tests and any post-test analysis and reports SouthBay chooses to conduct or cause to be produced are done in a manner consistent with customers' expectations of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA systems and infrastructure.³⁰ We encourage Alert SouthBay to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who experience anomalous WEA test performance to report their experience to the Bureau by submitting a brief description of the issue to the

²⁶ 47 CFR § 1.3.

²⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

²⁸ Alert SouthBay April Waiver Request at 1.

²⁹ See 2023 WEA Accessibility Report and Order at *13, para. 35.

³⁰ See 47 U.S.C. § 222.

FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, 47 CFR §§ 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, **ARE WAIVED**, to allow the test of WEA, as described above, in the geographic areas identified in the Alert SouthBay April Waiver Request; which test must be conducted subject to the conditions described herein. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission



PUBLIC NOTICE

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

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

DA No. 24-386

Report No. TEL-02358

Thursday April 25, 2024

International Authorizations Granted

Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12 and 63.20 of the Commission's rules. 47 CFR §§ 63.12, 63.20.

Unless otherwise noted, these grants authorize the applicants to: (1) become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22 and/or a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (2) assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (3) exceed the foreign ownership benchmarks applicable to common carrier radio licensees under 47 U.S.C. § 310(b); see Subpart T of Part 1 of the Commission's rules, 47 CFR § 1.5000-5004.

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20230504-00056 E Alleswolke Wireless 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: 04/23/2024

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

Alleswolke, a California limited liability company, is wholly owned by Alleswolke, Inc. a California corporation. Rui Zhu, a Canadian citizen, holds a 90% ownership interest in Alleswolke, Inc., and Duxing Mou, a U.S. citizen, holds the remaining 10% ownership interest.

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on April 16, 2024, by the National Telecommunications and Information Administration on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. Accordingly, we condition grant of the application for international section 214 authority on Alleswolke Wireless LLC complying with the commitments and undertakings set forth in the Letter of Agreement (LOA) from Rui Zhu, CEO, Alleswolke Wireless LLC, to the Chief, Foreign Investment Review Section ("FIRS"), Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, dated March 29, 2024 (LOA). The Petition and the LOA may be viewed on the FCC's website through the International Communications Filing System by searching for ITC-214-20230504-00056 and accessing the "Other Filings related to this application" from the Document Viewing Area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the authorization and thus grounds for declaring the authorization terminated without further action on the part of the Commission. Failure to meet a condition of the authorization may also result in monetary sanctions or other enforcement action by the Commission.

ITC-214-20240322-00051 E Dialwave, 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: 04/19/2024

Dialwave, Inc. (Dialwave) 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).

Dialwave, a Delaware corporation, is solely owned by Robert Nichols, a U.S. citizen.

ITC-ASG-20240322-00052 E Network Innovations US Holdings, LLC
Assignment
Grant of Authority Date of Action: 04/24/2024

Current Licensee: Network Innovations US Inc.

FROM: Network Innovations US Inc.

TO: Network Innovations US Holdings, LLC

On March 22, 2024, Network Innovations US Holdings, LLC filed a notification of the pro forma assignment of ITC-214-20001219-00728, an international section 214 authorization to provide resale service, from Network Innovations US Inc. to Network Innovations US Holdings, LLC, effective March 10, 2024. Prior to the pro forma transaction, Network Innovations US Inc., a Delaware corporation, was a direct wholly owned subsidiary of Network Terracom Inc. (Network Terracom), a Nevada corporation. In a corporate reorganization, Network Innovations US Holdings, LLC, a newly formed Florida limited liability company, was inserted into the ownership chain between Network Innovations US Inc. and Network Terracom Inc. Network Innovations US Inc. is now a direct wholly owned subsidiary of Network Innovations US Holdings, LLC which is now a direct wholly owned subsidiary of Network Terracom. As part of the reorganization ITC-214-20001219-00728 was assigned to Network Innovations US Holdings, LLC.

ITC-T/C-20240130-00022 E Gamma Acquisition L.L.C.
Transfer of Control
Grant of Authority Date of Action: 04/24/2024

Current Licensee: Gamma Acquisition L.L.C.

FROM: DISH Wireless Holding L.L.C.

TO: EchoStar Wireless Holding L.L.C.

On January 30, 2024, Gamma Acquisition L.L.C. (Gamma), a Colorado limited liability company that holds international section 214 authorizations to provide facilities-based and resale service (ITC-214-20100513-00194 and ITC-214-20100513-00195), filed a notification of the pro forma transfer of control of Gamma. Pursuant to a two-step process, the direct ownership and control of Gamma was transferred from DISH Wireless Holding L.L.C. (DISH Wireless Holding), a Colorado limited liability company, to Echostar Wireless Holding L.L.C. (Echostar Wireless Holding), a Nevada limited liability company. The Applicants filed supplements on February 1, 2024 and April 1, 2024.

Prior to the pro forma transfer of control, Gamma was a direct wholly owned subsidiary of DISH Wireless Holding and an indirect wholly owned subsidiary of DISH Network Corporation (DISH), a Nevada corporation. Charles W. Ergen, a U.S. citizen, beneficially owned over 90% of the voting stock of DISH and over 51% of the equity. Charles W. Ergen also beneficially owned approximately 93.5% of the voting stock and 60% of the equity of Echostar Corporation (Echostar), a Nevada corporation Echostar. See Applications Granted for the Transfer of Control of DISH Network Corp. and Its Subsidiaries to Echostar Corp., Public Notice, DA 23-1137 (OET/SB/WTB Dec 6, 2023).

On December 31, 2023, DISH was merged into Merger Sub, a newly incorporated direct wholly owned subsidiary of Echostar, with DISH being the surviving entity. As a result, DISH became a direct wholly owned subsidiary of Echostar, and Gamma became an indirect wholly owned subsidiary of Echostar. Charles W. Ergen now beneficially owns approximately 91.36% of the voting stock of Echostar and 54% of the equity.

On January 10, 2024, control of Gamma was transferred from DISH Wireless Holding to Echostar Wireless Holding, a direct wholly owned subsidiary of Echostar. Gamma was, and remains, indirectly controlled by Charles W. Ergen.

ITC-T/C-20240130-00023 E DISH Network Corporation
Transfer of Control
Grant of Authority Date of Action: 04/24/2024

Current Licensee: DISH Network Corporation

FROM: DISH Network Corporation

TO: EchoStar Corporation

On January 30, 2024, DISH Network Corporation (DISH), a Nevada corporation that holds an international section 214 authorization to provide facilities-based and resale service (ITC-214-20191219-00197), filed a notification of the pro forma transfer of control of DISH to Echostar Corporation (Echostar), effective December 31, 2023. The Applicants filed supplements on February 1, 2024 and April 1, 2024.

Prior to the pro forma transfer of control, Charles W. Ergen, a U.S. citizen, beneficially owned over 90% of the voting stock of DISH and over 51% of the equity. Charles W. Ergen also beneficially owned approximately 93.5% of the voting stock and 60% of the equity of Echostar Corporation (Echostar), a Nevada corporation Echostar. See Applications Granted for the Transfer of Control of DISH Network Corp. and Its Subsidiaries to Echostar Corp., Public Notice, DA 23-1137 (OET/SB/WTB Dec 6, 2023).

On December 31, 2023, DISH was merged into Merger Sub, a newly incorporated direct wholly owned subsidiary of Echostar, with DISH being the surviving entity. As a result, DISH became a direct wholly owned subsidiary of Echostar. Charles W. Ergen now beneficially owns approximately 91.36% of the voting stock of Echostar and 54% of the equity. DISH was, and remains, controlled by Charles W. Ergen.

ITC-T/C-20240130-00024 E DISH Wireless L.L.C.
Transfer of Control
Grant of Authority Date of Action: 04/24/2024

Current Licensee: DISH Wireless L.L.C.

FROM: DISH Network Corporation

TO: EchoStar Corporation

On January 30, 2024, DISH Wireless L.L.C. (DISH Wireless), a Colorado limited liability company that holds an international section 214 authorization to provide facilities-based and resale service (ITC-214-20210309-00050), filed a notification of the pro forma transfer of control of DISH Wireless from DISH Network Corporation (DISH) to Echostar Corporation (Echostar), effective December 31, 2023. The Applicants filed supplements on February 1, 2024 and April 1, 2024.

Prior to the pro forma transfer of control, DISH Wireless was a direct wholly owned subsidiary of DISH Wireless Holding L.L.C. (DISH Wireless Holding), a Colorado limited liability company, and an indirect wholly owned subsidiary of DISH, a Nevada corporation. Charles W. Ergen, a U.S. citizen, beneficially owned over 90% of the voting stock of DISH and over 51% of the equity. Charles W. Ergen also beneficially owned approximately 93.5% of the voting stock and 60% of the equity of Echostar Corporation (Echostar), a Nevada corporation Echostar. See Applications Granted for the Transfer of Control of DISH Network Corp. and Its Subsidiaries to Echostar Corp., Public Notice, DA 23-1137 (OET/SB/WTB Dec 6, 2023).

On December 31, 2023, DISH was merged into Merger Sub, a newly incorporated direct wholly owned subsidiary of Echostar, with DISH being the surviving entity. As a result, DISH became a direct wholly owned subsidiary of Echostar, and DISH Wireless became an indirect wholly owned subsidiary of Echostar. Charles W. Ergen now beneficially owns approximately 91.36% of the voting stock of Echostar and 54% of the equity. DISH Wireless was, and remains, indirectly controlled by Charles W. Ergen.

INFORMATIVE

ITC-214-20230919-00123 LiveOak Fiber, LLC

Effective April 23, 2024, LiveOak Fiber, LLC notified the Commission of the withdrawal of its international section 214 application.

SURRENDER

ITC-214-20040915-00366 Slappy Telephone, Inc.

Slappy Telephone, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20171214-00225 Sound Internet Services, Inc. dba PogoZone

Sound Internet Services, Inc. dba PogoZone notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20200324-00043 OysterTel

OysterTel notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

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

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

In the Matter of	)	
	)	
Applications of T-Mobile, US Inc. and	)	GN Docket No. 23-171
Ka'ena Corporation	)	
	)	
For Consent to Transfer Control of	)	ICFS File No. ITC-T/C-20230406-00043
International Section 214 Authorizations	)	ICFS File No. ITC-T/C-20230406-00044

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2024

Released: April 25, 2024

By the Chiefs, Office of International Affairs and Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we approve, subject to conditions, the applications of Ka'ena Corporation (Ka'ena) and T-Mobile, US Inc. (T-Mobile) (collectively, the Applicants) for Commission consent to the transfer of control of international section 214 authorizations held by Mint Mobile, LLC (Mint Mobile) and UVNV, Inc. (UVNV), which operates the Ultra Mobile brand, from Ka'ena to T-Mobile.¹ Based on our evaluation of the potential competitive effects as well as the likely public interest benefits, and in light of T-Mobile's voluntary handset unlocking commitment for Mint Mobile and Ultra Mobile devices² that we impose as a condition to our approval, we find that, on balance, the proposed transfers of control will serve the public interest, convenience, and necessity.

II. SERVING THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

2. *Transaction Review.* On April 6, 2023, Ka'ena³ and T-Mobile⁴ filed applications for consent to transfer control of international 214 authorizations held by Mint Mobile and UVNV, two

¹ ICFS File No. ITC-T/C-20230406-00043, at 1-3 (filed Apr. 6, 2023) (Mint Mobile Application); ICFS File No. ITC-T/C-20230406-00044, at 1-3 (filed Apr. 6, 2023) (UVNV Application).

² See Letter from Nancy Victory, DLA Piper LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Apr. 23, 2024) (T-Mobile Apr. 23, 2024 Commitments Letter) (attached as Appendix A).

³ Ka'ena Corporation (Ka'ena) is a Maine Corporation headquartered in Costa Mesa, California. Mint Mobile Application at 1; UVNV Application at 1. Ka'ena holds a majority (53%) and controlling interest in Mint Mobile, a non-facilities-based MVNO. Mint Mobile Application at 1-3, 14. UVNV, Inc. (UVNV), a Delaware corporation, is a wholly owned subsidiary of Ka'ena and operates the Ultra Mobile non-facilities-based MVNO brand. UVNV Application at 1-2, 5, 14. Both Mint Mobile and Ultra Mobile operate exclusively on the T-Mobile network. Mint Mobile Application at 5-6; UVNV Application at 5-6. UVNV also operates Plum, a Mobile Virtual Network Aggregator, which does not offer wireless service to the public. UVNV Application at 5 & n.3. Mint Mobile holds international section 214 authorization ITC-214-20191101-00176 and UVNV holds international section 214 authorization ITC-214-20141103-00290. Mint Mobile Application at 2; UVNV Application at 2.

⁴ T-Mobile US, Inc. (T-Mobile) is a publicly traded Delaware corporation controlled by Deutsch Telekom AG (Deutsche Telekom). Mint Mobile Application at 1-3; UVNV Application at 1-3. On May 1, 2023, the Applicants filed supplemental ownership information. Letter from Nancy Victory, DLA Piper, to Marlene H. Dortch, FCC, ICFS File No. ITC-T/C-20230406-00043 (filed May 1, 2023) (Mint Mobile Supplement), ICFS File No. ITC-T/C-20230406-00044 (filed May 1, 2023) (UVNV Supplement); see also T-Mobile Notification of *Pro Forma* Transfer (continued....)

affiliated Mobile Virtual Network Operators (MVNOs), from Ka'ena to T-Mobile.⁵ Pursuant to a March 9, 2023 Merger and Unit Purchase agreement between T-Mobile and Ka'ena, and related entities, T-Mobile will acquire control and indirect ownership of all of the membership interests in Mint Mobile and all of the shares of UVNV as well as their respective customers.⁶ Upon consummation, Mint Mobile and UVNV will both be wholly owned indirect subsidiaries of T-Mobile, and T-Mobile will continue providing Mint Mobile and Ultra Mobile branded services.⁷

3. On May 22, 2023, a Public Notice was released that established the pleading cycle and opened the docket.⁸ Ten comments were filed; no petitions to deny or comments opposing the proposed transaction were filed within the comment period.⁹ An Information Request was released on October 27, 2023.¹⁰ On November 21, 2023, T-Mobile responded to the Information Request.¹¹ On December 26, 2023, the National Telecommunications and Information Administration (NTIA) informed the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) had completed its review of the applications and had no recommendation and no objection to the Commission's granting the applications.¹²

4. *Standard of Review and Public Interest Framework.* Pursuant to section 214(a),¹³ we must determine whether the proposed transfer of control to T-Mobile of section 214 authorizations held by Mint Mobile and UVNV will serve the public interest, convenience, and necessity.¹⁴ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of

(Continued from previous page) _____

(filed Apr. 11, 2023) (notifying the Commission that Deutsche Telekom now has *de jure* control of T-Mobile in addition to its existing *de facto* control of T-Mobile). T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile. Mint Mobile Application at 1-3; UVNV Application at 1-3. T-Mobile 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. T-Mobile US, Inc., SEC Form 10-K, at 5-6 (filed Feb. 2, 2024) (77% postpaid customers, 15% prepaid customers, and 8% wholesale, roaming, and other services).

⁵ Mint Mobile Application; UVNV Application.

⁶ Mint Mobile Application at 5; UVNV Application at 5.

⁷ Mint Mobile Application at 5; UVNV Application at 5.

⁸ *Applications Filed for the Transfer of Control of Mint Mobile, LLC and UVNV, Inc. (D/B/A Ultra Mobile) to T-Mobile US, Inc.*, GN Docket No. 23-171, Public Notice, DA 23-429 (OIA May 22, 2023) (*Public Notice*).

⁹ Capital Region Chamber Comments; Center for Individual Freedom Comments; Center for Workforce Inclusion Comments; Hispanic Leadership Fund Comments; Information Technology and Innovation Foundation Comments; National Taxpayers Union Comments; R Street Institute Comments; SER National Comments; Silicon Harlem Comments; Telrite Holdings, Inc. Comments; Underserved Center for Workforce Inclusion Comments.

¹⁰ T-Mobile Information Request.

¹¹ T-Mobile Information Request Responses; *see also* Letter from Nancy J. Victory, Counsel, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Apr. 2, 2024). On March 27, 2024, OIA and WTB released a protective order. *Applications of T-Mobile US, Inc. and Ka'ena Corporation for Consent to Transfer Control of International Section 214 Authorizations*, GN Docket No. 23-171, Protective Order, DA 24-307 (OIA/WTB Mar. 27, 2024).

¹² Letter from Sean Conway, Deputy Chief Counsel, United States Department of Commerce, National Telecommunications and Information Administration, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, GN Docket No. 23-171 (filed Dec. 26, 2023) (NTIA Dec. 26, 2023 Letter).

¹³ 47 U.S.C. § 214(a).

¹⁴ *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, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*).

the Act, other applicable statutes, and the Commission's rules.¹⁵ 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.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.¹⁸ Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions to ensure that the public interest is served by the transaction.¹⁹ Specifically, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."²⁰

5. *Potential Public Interest Harms.* We find first that the proposed transaction will not violate any statutory provisions or Commission rules. We note that because T-Mobile, Mint Mobile, and Ultra Mobile each sell mobile telephony/broadband services in the same geographic areas, the proposed transaction raises horizontal issues.²¹ Further, the proposed transaction raises vertical issues because T-Mobile provides wholesale services to Mint Mobile and Ultra Mobile as well as to other MVNOs.

6. The Applicants assert that, because the proposed transaction will enable the Mint Mobile and Ultra Mobile brands to be more competitive, the proposed acquisition will enhance competition in the wireless marketplace.²² According to the Applicants, because Mint Mobile and Ultra Mobile operate exclusively on T-Mobile's network and are already attributed to T-Mobile, the transaction will not have any effect on market concentration.²³ The Applicants contend that as MVNOs, Mint Mobile and Ultra Mobile have a limited ability to independently reduce prices or improve quality.²⁴ The total customers of Mint Mobile and Ultra Mobile combined is 2.5 million, which, the Applicants argue, "is not enough to

¹⁵ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisitions L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 (2019) (*T-Mobile-Sprint Order*); *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations, et al.*, WT Docket No. 13-193, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB/IB 2014) (*AT&T-Leap Order*).

¹⁶ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁷ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁸ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁹ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17003, para. 24; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

²⁰ 47 U.S.C. § 214(c).

²¹ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17003-04, para. 26; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611, para. 79; *Applications of Deutsch Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2330, para. 21 (WTB/IB 2013) (*T-Mobile-MetroPCS Order*).

²² Mint Mobile Application at 6; UVNV Application at 6; see also Telrite Holdings, Inc. Comments at 1.

²³ Mint Mobile Application at 7; UVNV Application at 7.

²⁴ Letter from Nancy Victory, DLA Piper LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171, at 7 (filed June 5, 2023) (*T-Mobile June 5, 2023 Ex Parte*).

impact incentives.”²⁵ Regarding vertical foreclosure concerns, because Mint Mobile and Ultra Mobile are already exclusive to T-Mobile, the Applicants state that neither Mint Mobile nor Ultra Mobile are necessary distribution channels for other Mobile Network Operators (MNOs).²⁶ In addition, the Applicants argue that (1) MVNOs are highly differentiated and target distinct consumer groups; and (2) other MNOs compete aggressively for MVNO wholesale business.²⁷

7. Further, each of the ten commenters that filed is in favor of the Commission approving the transaction.²⁸ The Information Technology and Innovation Foundation, for example, asserts that the effect on the marketplace will be minimal because other MNOs are not losing business and T-Mobile is not gaining significant market share.²⁹ DISH Network Corporation (DISH), on the other hand, notes that Mint Mobile’s current prepaid prices are in certain cases lower than, or at least competitive with, the prices of T-Mobile’s Metro prepaid brand.³⁰ DISH argues that these prices could easily rise higher without competitive pressure from Mint Mobile.³¹ DISH concludes that this transaction would not be in the public interest because it will lead to further consolidation of the wireless landscape.³²

8. Horizontal transactions raise potential competitive concerns when the combined entity may have the incentive and the ability unilaterally to raise prices, lower quality, or otherwise harm competition in a relevant market.³³ As its starting point, the Commission has previously used a two-part screen to help identify those markets that provide particular reason for further competitive analysis.³⁴ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI),³⁵ and the change in the HHI in the relevant market.³⁶ The second part of the screen identifies local markets where the merged entity would hold approximately one-third or more of the total spectrum suitable and

²⁵ T-Mobile June 5, 2023 *Ex Parte* at 7.

²⁶ T-Mobile June 5, 2023 *Ex Parte* at 7.

²⁷ T-Mobile June 5, 2023 *Ex Parte* at 7.

²⁸ Capital Region Chamber Comments; Center for Individual Freedom Comments; Center for Workforce Inclusion Comments; Hispanic Leadership Fund Comments; Information Technology and Innovation Foundation Comments; National Taxpayers Union Comments; R Street Institute Comments; SER National Comments; Silicon Harlem Comments; Telrite Holdings, Inc. Comments; Underserved Center for Workforce Inclusion Comments.

²⁹ Information Technology and Innovation Foundation Comments at 2; *see also* Telrite Holdings, Inc. Comments at 1 (stating that the transaction would not result in additional market concentration or harm competition in the Lifeline and Affordable Connectivity Program).

³⁰ Letter from Jeffrey H. Blum, Executive Vice President, External & Legislative Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171, at 4 (filed Dec. 18, 2023) (DISH Dec. 18, 2023 *Ex Parte*).

³¹ DISH Dec. 18, 2023 *Ex Parte* at 4.

³² DISH Dec. 18, 2023 *Ex Parte* at 2-4.

³³ *See, e.g., Verizon-TracFone Order*, 36 FCC Rcd at 17008-09, para. 38; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10625, para. 111.

³⁴ *See, e.g., Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *AT&T-Leap Order*, 29 FCC Rcd at 2752-53, 2755-56, paras. 39, 41, 47.

³⁵ *See, e.g., Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41.

³⁶ The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See, e.g., Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35 & n.97; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87 & n.277; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

available for the provision of mobile telephony/broadband services, post-transaction.³⁷ We do not apply the HHI screen for the reasons articulated in the *Verizon-TracFone Order*,³⁸ and neither do we apply the spectrum screen because there is no transfer of spectrum implicated by the instant transaction. Finally, and similarly to our competitive review in the *Verizon-TracFone Order*,³⁹ Commission staff conducted an upward pricing pressure (UPP) analysis.⁴⁰ The results of this analysis indicate that significant unilateral competitive effects are unlikely as a result of this transaction.

9. Regarding potential vertical effects, the proposed transaction raises concerns regarding whether the addition of Mint Mobile and Ultra Mobile to T-Mobile's portfolio of wireless brands increases the likelihood of foreclosure or price increases by T-Mobile in the wholesale market. As the Commission has long recognized, a vertical merger may increase a merged firm's incentive to "raise rivals' costs either by foreclosing supply of the input it sells downstream competitors or by raising the price at which it sells the input to competitors."⁴¹ The integrated firm will foreclose or raise input prices if the profits gained in the downstream (retail) market exceed the profits lost in the upstream (wholesale) market.⁴²

10. Regarding vertical foreclosure concerns, the Applicants state that neither Mint Mobile nor Ultra Mobile are necessary distribution channels for other MNOs because Mint Mobile and Ultra Mobile are already exclusive to T-Mobile.⁴³ In addition, the Applicants argue that: (1) MVNOs are highly differentiated and target distinct consumer groups; and (2) other MNOs compete aggressively for MVNO wholesale business.⁴⁴ DISH, however, raises concerns about the transaction on the ground that the acquisition of another MVNO by T-Mobile increases T-Mobile's incentive to discriminate against the remaining independent MVNOs.⁴⁵ In addition, on April 15, 2024, Lyca Mobile,⁴⁶ which has an exclusive

³⁷ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17007, para. 35; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; see also *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6140-41, para. 13 (2014).

³⁸ *Verizon-TracFone Order*, 36 FCC Rcd at 17007-08, paras. 35-37.

³⁹ *Verizon-TracFone Order*, 36 FCC Rcd at 17010, para. 41. Commission staff calculated the net UPP index that was first proposed by Farrell and Shapiro. Joseph Farrell & Carl Shapiro, *Antitrust evaluation of horizontal mergers: An economic alternative to market definition*, 10 The BE Journal of Theoretical Economics 1 at 2 (2010).

⁴⁰ The Commission previously has calculated UPP indices as an additional preliminary screen for potential unilateral effects. See, e.g., *T-Mobile-Sprint Order*, 34 FCC Rcd at 10636, para. 129 & n.447; *AT&T-Leap Order*, 29 FCC Rcd at 2765-66, paras. 70-71; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2341, para. 55.

⁴¹ *Verizon-TracFone Order*, 36 FCC Rcd at 17017, para. 56; *General Motors Corporation and Hughes Electronics Corporation, Transferors and the News Corporation Limited, Transferee, for Authority to Transfer Control*, MB Docket No. 03-124, 19 FCC Rcd 473, 510, para. 78 (2004) (*News Corp.-Hughes Order*); see also *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4250-51, para. 29 (2011) (*Comcast-NBC Universal Order*); see generally Michael H. Riordan and Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 Antitrust L. J. 519 (1995) (Riordan and Salop (1995)) (discussing how vertical mergers may increase the incentive and ability of the merged firm to foreclose or raise the costs of rivals); Jeffrey Church, *Vertical Mergers*, 2 Issues in Competition Law and Policy 1461 (2008) (same); Patrick Rey and Jean Tirole, *A Primer on Foreclosure*, 3 Handbook of Industrial Organization 2170 (2007) (same).

⁴² Riordan and Salop (1995) at 528.

⁴³ T-Mobile June 5, 2023 *Ex Parte* at 7.

⁴⁴ T-Mobile June 5, 2023 *Ex Parte* at 7.

⁴⁵ DISH Dec. 18, 2023 *Ex Parte* at 3.

⁴⁶ Lyca Mobile is the world's largest international MVNO, serving over 16 million customers worldwide; however, its footprint in the United States is markedly lower, with approximately 542,000 customers at the end of 2023. *Ex* (continued....)

MVNO agreement with T-Mobile, requested that the Commission deny the transaction, echoing DISH's concern of potential post-transaction discrimination against independent MVNOs.⁴⁷ Further, Lyca argues that T-Mobile has violated its MVNO commitments in the *T-Mobile-Sprint Order*⁴⁸ and also violated its MVNO obligations under the U.S. Department of Justice Final Judgment (DOJ Final Judgment).⁴⁹

11. On April 18, 2024, T-Mobile responded to Lyca's *ex parte*, asserting that: (1) Lyca failed to allege any specific violation of T-Mobile's MVNO commitments in the *T-Mobile-Sprint Order*;⁵⁰ (2) the Commission is not the proper venue for raising the claim that T-Mobile violated the DOJ Final Judgment in connection with the T-Mobile/Sprint merger;⁵¹ and (3) regarding Lyca's specific allegations related to a contractual disagreement between Lyca and T-Mobile, which is currently being litigated in state court,⁵² that contractual dispute does not arise out of the transaction.⁵³

12. Concerning Lyca's specific allegations that T-Mobile violated its MVNO agreement with Lyca, we agree with T-Mobile that the contractual dispute between T-Mobile and Lyca is not transaction-specific and that the appropriate venue for resolving this contractual disagreement is the state court where the case is being litigated. We also find that Lyca's assertion that T-Mobile violated the terms of the DOJ Final Judgment in its dealings with Lyca is not merger-specific, but rather related to its commercial dispute with T-Mobile and that, as a result, this is not the appropriate proceeding for resolving such allegations. While Lyca argues that T-Mobile has violated its MVNO commitments in the *T-Mobile-Sprint Order*, we note that T-Mobile's MVNO commitments only involved Sprint's MVNO agreement with Altice.⁵⁴

13. Regarding DISH's and Lyca's more general assertion that T-Mobile will have an increased incentive to discriminate against independent MVNOs, we note, as discussed above that, under certain circumstances, a vertical merger could increase the incentive of the merged firm to foreclose or raise the costs of downstream or upstream rivals. In this case, T-Mobile is required under provision VII.A-B of the DOJ's Amended Final Judgment in connection with the T-Mobile/Sprint merger, "to extend existing MVNO agreements on their existing terms . . . until expiration of this Final Judgment" in

(Continued from previous page) _____

Parte from Jennifer L. Richter, Nicole McFarland, Counsels for Lyca Mobile, Akin Gump Strauss Hauer & Feld LLP, Exec. Summary, 3-4 (filed Apr. 15, 2024) (Lyca Apr. 15, 2024 *Ex Parte*). Lyca Mobile titled its filing, "Comments and Objections of Lycamobile USA Inc." Because the comment pleading cycle ended July 6, 2023, although Lyca self-styled its filing "Comments and Objections of Lycamobile USA, Inc.," the filing has not met the Commission requirements for a waiver of the comment deadline and is therefore being treated as an *ex parte*.

⁴⁷ Lyca Apr. 15, 2024 *Ex Parte* at Exec. Summary, 2-4, 15. Lyca asserts that it "has struggled over the past several years to obtain basic functionalities from T-Mobile, such as eSIM and access to T-Mobile's 5G standalone architecture, and to get T-Mobile to fairly observe the terms of its MVNO agreement." Lyca Apr. 15, 2024 *Ex Parte* at Exec. Summary, 10-13.

⁴⁸ Lyca Apr. 15, 2024 *Ex Parte* at 7-8.

⁴⁹ Lyca Apr. 15, 2024 *Ex Parte* at 8, 12-14.

⁵⁰ T-Mobile Motion to Dismiss at 2, 4-5 (filed Apr. 18, 2024) (T-Mobile Apr. 18, 2024 Motion).

⁵¹ T-Mobile Apr. 18, 2024 Motion at 5.

⁵² Lyca Apr. 15, 2024 *Ex Parte* at 3-6.

⁵³ T-Mobile Apr. 18, 2024 Motion at 2-4.

⁵⁴ T-Mobile stated that it "has publicly represented that New T-Mobile will honor the terms of existing Sprint and T-Mobile MVNO agreements," but did not make this a commitment. Its only MVNO commitment involved Sprint's MVNO agreement with Altice. *T-Mobile-Sprint Order*, 34 FCC Rcd at 10807, Appx. G: Applicants' Commitments.

2027 and “to support eSIM technology on smartphones.”⁵⁵ Nevertheless, we will continue to closely monitor the MVNO marketplace, and we will not hesitate to exercise Commission jurisdiction should the public interest, convenience, and necessity, so require. Further, to the extent the Commission receives allegations of anticompetitive conduct regarding T-Mobile’s relations with MVNOs, which might also violate provision VII.A-B of the Amended DOJ Final Judgment, the Commission will review such concerns and may coordinate with the DOJ in any investigation by the DOJ or Monitoring Trustee regarding such claims.

14. *Potential Public Interest Benefits.* After assessing the potential competitive harms of the proposed transaction, 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.”⁵⁶ 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 transaction⁵⁷—and verifiable.⁵⁸ As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits.

15. The Applicants state that T-Mobile will continue providing Mint Mobile and Ultra Mobile MVNO branded services, and as these MVNOs exclusively operate on the T-Mobile network, the Applicants assert that the transaction will be a seamless customer transition and these customers will continue to have access to T-Mobile’s 5G network for the long-term.⁵⁹ The Applicants further state that the brands are complementary to T-Mobile’s current prepaid service offerings, and claim that as a result of the transaction, there will be faster growth and the ability to reach more customers across the United States with high-quality plans at accessible prices.⁶⁰ According to the Applicants, T-Mobile’s supplier relationships and distribution scale will enable these brands “to supercharge their ability to deliver more competitive offers and device pricing, greater device inventory, and expanded distribution.”⁶¹ The Applicants assert that MVNOs have higher costs than MNOs because they need to pay to access the underlying network.⁶² The Applicants conclude that this transaction will reduce Mint Mobile’s and Ultra Mobile’s costs, claiming that this will allow them to grow faster and offer high-quality plans at accessible prices.⁶³

⁵⁵ United States v. Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp., Sprint Corp., and DISH Network Corporation, Amended Final Judgment, at 22 (filed Oct. 23, 2023), available at <https://storage.courtlistener.com/recap/gov.uscourts.dcd.209577/gov.uscourts.dcd.209577.139.0.pdf>.

⁵⁶ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17025-26, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 57.

⁵⁷ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17025-26, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; see also *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

⁵⁸ See, e.g., *Verizon-TracFone Order*, 36 FCC Rcd at 17025-26, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

⁵⁹ Mint Mobile Application at 5; UVNV Application at 5; T-Mobile June 5, 2023 *Ex Parte* at 4, 8-9.

⁶⁰ Mint Mobile Application at 6; UVNV Application at 6; Information Request Narrative Response at 2; T-Mobile June 5, 2023 *Ex Parte* at 5; see also Center for Individual Freedom Comments at 2; Center for Workforce Inclusion Comments at 2.

⁶¹ Mint Mobile Application at 6; UVNV Application at 6; Information Request Narrative Response at 2-4; T-Mobile June 5, 2023 *Ex Parte* at 5; see also Information Technology and Innovation Foundation Comments at 2; Center for Workforce Inclusion Comments at 1; SER National Comments at 2.

⁶² T-Mobile June 5, 2023 *Ex Parte* at 5.

⁶³ T-Mobile June 5, 2023 *Ex Parte* at 5.

16. Each of the ten commenters articulated reasons why there will be benefits post-transaction. For example, Center for Workforce Inclusion asserts that the transaction will yield many benefits for consumers nationwide, including those in underserved areas, because Mint Mobile and Ultra Mobile will expand more quickly while continuing to offer affordable, high-quality service.⁶⁴ Likewise, Silicon Harlem requests that the Commission “carefully consider the potential positive impact this transaction can have on expanding affordable wireless access and promoting digital equity.”⁶⁵ In particular, SER National states that T-Mobile’s acquisition would be a positive step for immigrant communities and communities in which English is a second language, where high-quality prepaid plans play an especially important role.⁶⁶ In addition, Capital Region Chamber, which represents more than 2,600 businesses and organizations from throughout the Capital Region, asserts that the transaction would further develop each company’s respective strengths and expand their reach benefiting Capital Region businesses and residents, including by lowering costs and increasing access to devices.⁶⁷

17. We have reviewed the Applicants’ claimed transaction-specific benefits regarding lower operational costs, improved supplier relationships and greater device purchasing power, and expanded distribution.⁶⁸ After careful analysis, we find that the elimination of double marginalization will reduce Ka’ena’s costs of serving its customers.⁶⁹ This should enable the two MVNOs to lower prices or improve service package characteristics, thus benefitting their subscribers.⁷⁰ We also give some credit to T-Mobile’s claim that the merger will give Mint Mobile and Ultra Mobile greater device purchasing power and expanded distribution.⁷¹ T-Mobile’s larger subscriber base as compared to Ka’ena means that Ka’ena’s customers likely will benefit from the greater bargaining power of the merged entity post-transaction.⁷² Finally, we find that a more extensive retail distribution channel is a partially creditable benefit of the transaction.

18. *Other Public Interest Issues: Handset Unlocking.* In a February 5, 2024 *ex parte*, the Public Interest Groups express concern over the “impact of the loss of these maverick MVNOs on the wireless market, including that consumers may face unnecessary obstacles when switching wireless

⁶⁴ Center for Workforce Inclusion Comments at 2; *see also* Capital Region Chamber Comments at 1 (urging the Commission “to approve the transaction given the connectivity challenges that rural communities continue to face”).

⁶⁵ Silicon Harlem Comments at 2.

⁶⁶ SER National Comments at 2; *see also* Hispanic Leadership Fund Comments.

⁶⁷ Capital Region Chamber Comments at 1.

⁶⁸ T-Mobile June 5, 2023 *Ex Parte* at 5.

⁶⁹ The Commission has previously credited efficiencies generated through the elimination of double marginalization. *See, e.g., Verizon-TracFone Order*, 36 FCC Rcd at 17012-13, paras. 44-45; *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, 6501, para. 373 (2016); *Comcast-NBC Universal Order*, 26 FCC Rcd at 4335, para. 237 (finding that the elimination of double marginalization will result in some benefits for consumers); *News Corp.-Hughes Order*, 19 FCC Rcd at 544-45, paras. 154-56 (agreeing that vertical integration can reduce prices by reducing double marginalization).

⁷⁰ T-Mobile June 5, 2023 *Ex Parte* at 5; *Verizon-TracFone Order*, 36 FCC Rcd at 17026-27, para. 76; *Comcast-NBC Universal Order*, 26 FCC Rcd at 4335, para. 237 (explaining that it is well accepted that a vertical merger may result in lower prices because the “combined firm will see its combined marginal costs as lower than the two firms did separately, and it will price accordingly”).

⁷¹ T-Mobile June 5, 2023 *Ex Parte* at 5-6; *Verizon-TracFone Order*, 36 FCC Rcd at 17027, 17029-30, paras. 77, 89-90.

⁷² T-Mobile’s subscriber numbers are based on the December 2022 Numbering Resource Utilization/Forecast (NRUF) data. *See* T-Mobile June 5, 2023 *Ex Parte* at 7 (Ka’ena’s subscriber numbers).

providers.”⁷³ These groups urge the Commission to adopt conditions requiring T-Mobile to “commit to a shorter unlocking period.”⁷⁴ Following the submission of the Public Interest Groups’ *ex parte*, DISH submitted an *ex parte* in support of the unlocking conditions proposed therein.⁷⁵

19. On April 23, 2024, T-Mobile filed certain voluntary commitments to address the public interest issue of handset unlocking.⁷⁶ In brief, T-Mobile has, subject to certain conditions and limitations, committed to implementing a 60-day unlocking period for all Mint Mobile and Ultra Mobile devices activated on the T-Mobile network both pre- and post-closing. T-Mobile has also committed to provide for automatic unlocking of all such devices that are capable of automatic unlocking and that have been activated with Mint Mobile or Ultra Mobile for at least 60 days. In addition, no later than two years after closing, T-Mobile will ensure that all new Mint Mobile and Ultra Mobile devices will be capable of automatic unlocking. T-Mobile will provide notice to all covered customers of the unlocking policy via text message at no cost to the consumer.⁷⁷ We find that these commitments, as detailed in Appendix A, will serve the public interest as they will make it easier for Mint Mobile and Ultra Mobile customers to switch service providers, and we accordingly adopt the commitments as conditions for our approval of the proposed international section 214 transfer.

20. *National Security Review.* In the *Public Notice*, the Commission found that the applications come within an exclusion from referral to the Executive Branch for review of the applications for national security, law enforcement, foreign policy and trade policy issues.⁷⁸ The Applicants argued that the applications should be exempt from referral for Executive Branch review because T-Mobile: (1) is subject to an agreement with an Executive Branch agency concerning national security and/or law enforcement, (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

⁷³ Letter from Michael Calabrese, Director, Wireless Future Program, Open Technology Institute at New America, Jonathan Schwantes, Senior Policy Counsel, Consumer Reports, Jonathan Bergmayer, Legal Director, Public Knowledge, Andrew Jay Schwartzman, Senior Counselor, Benton Institute for Broadband & Security, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171, at 1 (filed Feb. 5, 2024) (Public Interest Groups Feb. 5, 2024 *Ex Parte*). These groups submitted a number of other *ex parte* letters, including several memorializing presentations made to staff in the Chairwoman’s office, Commissioners Starks’ and Gomez’s offices, and WTB, OEA, and the Office of General Counsel, in which they urged the Commission to adopt the Public Interest Groups’ handset unlocking proposal. See Letter from Nat Purser, Government Affairs Policy Advocate, Public Knowledge, Michael Calabrese, Director, Wireless Future Program, New America’s Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Feb. 21, 2024); Letter from Michael Calabrese, Director, Wireless Future Program, New America’s Open Technology Institute, Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Mar. 6, 2024); Letter from Michael Calabrese, Director, Wireless Future Program, New America’s Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Mar. 21, 2024); Letter from Michael Calabrese, Director, Wireless Future Program, New America’s Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Mar. 23, 2024).

⁷⁴ Public Interest Groups Feb. 5, 2024 *Ex Parte* at 1-4.

⁷⁵ Letter from Jeffrey H. Blum, DISH, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Feb. 22, 2024). Although it did not sign on in support of the same unlocking conditions recommended by the Public Interest Groups and DISH, Verizon also filed an *ex parte* raising the issue of handset unlocking and urging the Commission to “assess the costs and benefits of an unlocking policy” more broadly. Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (filed Mar. 19, 2024).

⁷⁶ T-Mobile Apr. 23, 2024 Commitments Letter.

⁷⁷ T-Mobile Apr. 23, 2024 Commitments Letter.

⁷⁸ *Public Notice* at 2 (citing *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10938-42, paras. 29-39 (2020) (*Executive Branch Review Process Order*)).

agreement.⁷⁹ Based on the representations from the Applicants, the Commission exercised its discretion and did not refer the applications to the Executive Branch at that time,⁸⁰ although it did provide a courtesy copy of the *Public Notice* to the Executive Branch agencies.⁸¹

21. On May 26, 2023, pursuant to Executive Order 13913, the DOJ, on behalf of the Committee, requested that the Commission refer the applications to the Committee for review to determine whether they pose a risk to the national security or law enforcement interests of the United States.⁸² On June 2, 2023, the Commission referred the applications to the Committee for its review.⁸³ On June 6, 2023, the Committee notified the Commission that it was reviewing the applications⁸⁴ and on September 25, 2023, notified the Commission that it had begun its initial, 120-day review to assess whether granting the applications will pose a risk to the national security or law enforcement interests of the United States.⁸⁵

22. On December 26, 2023, NTIA filed a letter stating that the Committee “has no recommendation at this time to the Commission approving the application[s] and no objection to the Commission granting [them].”⁸⁶ NTIA also filed a letter from T-Mobile to the Committee clarifying that “the Mint Mobile and Ultra Mobile assets T-Mobile obtains as a result of the proposed transaction will be subject to any T-Mobile mitigation agreement in effect and will be operated consistent with the agreement’s requirements.”⁸⁷ Taking into consideration the recommendation of the Committee, we find that the applications do not raise national security, law enforcement, foreign policy, or trade policy concerns that would require imposition of special conditions on grant of the applications.

23. *Conclusion.* Based on our evaluation of the likely competitive effects, and in light of the benefits resulting from the merger and the voluntary commitments that T-Mobile has made concerning handset unlocking, which we make as a condition of our approval, we find that the proposed transfer will serve the public interest, convenience, and necessity.

III. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, and sections 63.18 and 63.24 of the Commission’s rules, 47 CFR §§ 63.18 and 63.24, and pursuant to the authority delegated under sections 0.19, 01.31, 0.331 and

⁷⁹ Mint Mobile Application at 13; UVNV Application at 13 (citing *T-Mobile-Sprint Order*, 34 FCC Rcd 10578, 10734-35, paras. 353-54).

⁸⁰ *Public Notice* at 2 (citing *Executive Branch Review Process Order*, 35 FCC Rcd at 10941, 10957-58, para. 36 & n.99, para. 81 & n.205).

⁸¹ *Public Notice* at 2 (citing *Executive Branch Review Process Order*, 35 FCC Rcd at 10939, para. 30 & n.81).

⁸² Letter from Christopher R. Clements, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC, GN Docket No. 23-171 (filed May 26, 2023).

⁸³ Non Streamlined International Applications/Petitions Accepted For Filing, Report No. TEL-02280NS, Public Notice (OIA June 2, 2023).

⁸⁴ Letter from Christopher R. Clements, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC, GN Docket No. 23-171 (filed June 6, 2023).

⁸⁵ Letter from Elizabeth K. McIntyre, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC, GN Docket No. 23-171 (filed Sept. 25, 2023).

⁸⁶ NTIA Dec 23, 2023 Letter at 1.

⁸⁷ Letter from Mary Jean Fell, Vice President, Legal, T-Mobile US, Inc. to Christopher R. Clements, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, dated November 29, 2023 filed in GN Docket No. 23-171 by NTIA (filed Dec. 26, 2023) (citing Mint Mobile Application at 13; UVNV Application at 13).

0.351 of the Commission's rules, 47 CFR §§ 0.19, 0.131, 0.331 and 0.351, the Applications for Consent to Transfer Control of Mint Mobile's and UVNV's international section 214 authorizations from Ka'ena to T-Mobile are GRANTED to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein, including Appendix A.

25. IT IS FURTHER ORDERED that the conditions incorporated herein shall continue to apply until they expire by their own terms as expressly stated or as otherwise provided in Appendix A.

26. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

M. Ethan Lucarelli
Chief
Office of International Affairs

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

APPENDIX A

T-Mobile's Commitments



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April 23, 2024

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: Notification of Written *Ex Parte* Presentation
Applications of T-Mobile US, Inc. and Ka'ena Corporation for Transfer Control of
International Section 214 Authority Held by Mint Mobile, LLC and UVNV, Inc.;
GN Docket No. 23-171**

Dear Ms. Dortch:

T-Mobile US, Inc. ("T-Mobile"), by its counsel, hereby submits this written *ex parte* presentation in the above-referenced docket pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). T-Mobile believes that the public interest benefits of its proposed acquisition of the Mint Mobile and Ultra Mobile wireless brands and their customers are clear and compelling and that no credible competitive concerns have been raised with respect to the proposed transaction. Nevertheless, in order to facilitate prompt grant of the applications, T-Mobile submits the following voluntary commitments to be conditions to the grant of the T-Mobile/Ka'ena Corporation transfer of control applications:

Within 60 days of the closing of the transaction, T-Mobile commits to implement an unlocking policy applicable to all Mint Mobile and Ultra Mobile devices activated on the T-Mobile network both pre- and post-closing. Specifically, within 60 days after closing T-Mobile will:

- 1) Automatically unlock *existing* Mint Mobile and Ultra Mobile devices that are capable of automatic unlocking if they have been activated on the T-Mobile network for at least 60 days and are not currently on a device financing plan;¹

¹ For all commitments listed herein, if a customer pays off the balance of a device financing plan, the device will be automatically unlocked (or be capable of manual unlocking), assuming 60 days have passed after activation of the device on the T-Mobile network.



Marlene H. Dortch
April 23, 2024
Page Two

- 2) Automatically unlock *new* and existing Mint Mobile and Ultra Mobile devices that are capable of automatic unlocking and that are not currently on a device financing plan 60 days after they have been activated on the T-Mobile network;
- 3) Provide Mint Mobile and Ultra Mobile customers with a manual means for unlocking *existing* devices that are not capable of automatic unlocking and are not currently on a device financing plan if they have been activated on the T-Mobile network for 60 days;
- 4) Provide Mint Mobile and Ultra Mobile customers with a manual means for unlocking *new* and existing devices that are not currently on a device financing plan and are not capable of automatic unlocking 60 days after they have been activated on the T-Mobile network;
- 5) At the time a Mint Mobile or Ultra Mobile device that is not capable of automatic unlocking is eligible for unlocking, provide customers with clear instructions as to how the device may be manually unlocked;
- 6) No later than 24 months after the closing of the transaction, ensure that all new Mint Mobile and Ultra Mobile devices the company offers are capable of automatic unlocking;
- 7) Within 60 days after closing the transaction, provide notice of the above unlocking policy to existing Mint Mobile and Ultra Mobile customers via text message at no cost to the customer (in particular, such notification will identify relevant website resources regarding unlocking);
- 8) Beginning 60 days after closing, notify new Mint Mobile and Ultra Mobile customers of the applicable unlocking policies upon activation of their new device via text message at no cost to the customer (in particular, such notification will identify relevant website resources regarding unlocking); and
- 9) Report to WTB and OEA the total number of locked Mint Mobile and Ultra Mobile devices activated on the T-Mobile network, and of that the total number of locked devices that are capable of automatic unlocking, within 60 days of closing the transaction and again on the first and second anniversary of the transaction's closing, after which time all new devices offered to Mint Mobile and Ultra Mobile customers must be capable of automatic unlocking.



Marlene H. Dortch
April 23, 2024
Page Three

Note, however, that T-Mobile will not unlock devices that it determines within 60 days of activation as likely purchased through fraudulent means (until standard fraud investigation practices have determined there is no likely fraud), or as otherwise required by law.

For the avoidance of doubt, the above unlocking policies will continue to apply to the Mint Mobile and Ultra Mobile brands if sold or rebranded. In addition, if the Mint Mobile and Ultra Mobile brands are subsumed into another T-Mobile brand, these unlocking policies will continue to apply to existing Mint Mobile and Ultra Mobile customers as of the time the affected brand is subsumed (*i.e.*, these customers will be grandfathered with respect to the above unlocking policy).

In view of the record in this proceeding and the commitments submitted herewith, T-Mobile requests prompt grant of the T-Mobile/Ka'ena Corporation applications for transfer of control as serving the public interest.

Please direct any questions regarding the foregoing to the undersigned counsel for T-Mobile.

Respectfully submitted,

Nancy J. Victory

Nancy J. Victory

cc: Stacy Ferraro
Judith Dempsey
Karen Johnson
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PUBLIC NOTICE

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DA 24-389
Released: April 25, 2024

**DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ASSIGNMENT OF
CERTAIN ASSETS OF NOVA CABLEVISION, INC.
TO CABLE ONE, INC. AND CABLE VOIP LLC**

**WC Docket No. 23-353
WC Docket No. 10-90**

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the application filed by Nova Cablevision, Inc. (Nova) (Assignor), Cable One, Inc. (Cable One) and Cable One VoIP LLC (VoIP LLC, together with Cable One, Assignees) (Assignor and Assignees collectively, the Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to assign certain Nova assets to Assignees.² We also address the conditional authorization of Rural Digital Opportunity Fund (RDOF) support associated with this transaction.

On December 1, 2023, the Bureau released a public notice seeking comment on the Application.³ The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

Nova, an Illinois corporation, is registered with the Commission as an interconnected VoIP service provider and provides video/cable, broadband Internet access, and interconnected VoIP services in the state of Illinois.⁴ Nova is a designated eligible telecommunications carrier (ETC) in Illinois and

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

² Application for Consent to Assign Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-353 (filed Oct. 18, 2023) (Application). Applicants filed supplements to the Application on November 16, 2023 and April 22, 2024. Supplement to the Application for Consent to Assign Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-353 (filed Nov. 16, 2023) (Nov. Supplement); Supplement to the Application for Consent to Assign Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-353 (filed Apr. 22, 2024) (Apr. 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 Assignment of Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC*, WC Docket No. 23-353, Public Notice, DA 23-1128 (WCB 2023) (Public Notice).

⁴ Application at 3.

receives high-cost universal service support through the RDOF support mechanism in the state of Illinois.⁵ Nova does not have any subsidiaries or affiliates⁶ and is currently owned by Robert Fischer and John Beck, both U.S. citizens.⁷

Cable One, a publicly traded Delaware corporation, is a cable operator that is registered with the Commission as an interconnected VoIP service provider.⁸ Cable One and its subsidiaries⁹ provide cable/video, broadband Internet access, telecommunications, and/or interconnected Voice over Internet Protocol (VoIP) services in 23 states.¹⁰ Fidelity Cablevision, a designated ETC, receives RDOF support in Missouri.¹¹ ComSouth, a designated ETC, receives Alternative Connect America Cost Model (A-CAM) support in Georgia.¹² As of January 1, 2024, Fidelity Telephone, a designated ETC, receives Enhanced A-CAM support in Missouri,¹³ and Bluffton and Hargray Telephone, both designated ETCs, receive Enhanced A-CAM support in South Carolina.¹⁴

VoIP LLC, a wholly-owned subsidiary of Cable One and a Delaware limited liability corporation, is registered with the Commission as an interconnected VoIP service provider¹⁵ and currently provides interconnected VoIP services in Arizona and Kansas.¹⁶ VoIP LLC is designated as an ETC in Idaho and Louisiana and has been authorized by the Commission to receive RDOF support in those states.¹⁷ In connection with this proposed transaction, VoIP LLC has filed an application for ETC designation in Illinois.¹⁸

⁵ *Id.*; see also *Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, WC Docket No. 19-126 et al., Public Notice, 37 FCC Rcd 3570, Attach. A at 279 (WCB/OEA 2022) (authorizing Nova to receive \$785,400.00 in RDOF support to serve 24 eligible census blocks. Nova also participates in the Lifeline program in Illinois. Application at 3.

⁶ Nov. Supplement at 3.

⁷ Application at 9.

⁸ *Id.* at 2.

⁹ In addition to VoIP LLC, the other wholly-owned subsidiaries of Cable One are: Fidelity Telephone, LLC (Fidelity Telephone) (incumbent local exchange carrier (LEC)); Fidelity Cablevision, LLC (Fidelity Cablevision) (competitive LEC); CoBridge Communications LLC; CoBridge Broadband, LLC; Hargray Telephone Company, LLC (Hargray Telephone) (incumbent LEC); Bluffton Telephone Company, LLC (Bluffton) (incumbent LEC); Hargray, LLC; Hargray of Alabama, LLC; ComSouth Telecommunications, LLC (ComSouth) (incumbent LEC); and ComSouth Telenet, LLC. Application at 2; Nov. Supplement at 1-2. All affiliates of Cable One that receive high-cost universal service support receive model-based support. Nov. Supplement at 1-2.

¹⁰ Application at 2. These states are: Alabama, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, and Washington. *Id.*

¹¹ Nov. Supplement at 1. Fidelity Cablevision also participates in the Lifeline program in Missouri and Oklahoma. *Id.*

¹² *Id.* at 2.

¹³ *Id.* Fidelity Telephone and ComSouth also participate in the Lifeline program in the states in which they receive high-cost universal service support. *Id.*

¹⁴ *Id.* Bluffton and Hargray Telephone also participate in the Lifeline program in the South Carolina.

¹⁵ Application at 2.

¹⁶ *Id.*

¹⁷ *Id.* VoIP LLC also participates in the Lifeline program in Idaho and Louisiana. *Id.*

Cable One has a 10% or greater direct or indirect interest in three companies: Clearwave Fiber (Clearwave), a Delaware limited liability company that acts as a holding company (58%); AMG Technology Investment Group, LLC d/b/a Nextlink Internet (Nextlink), a Texas limited liability company and competitive LEC that offers voice and/or Internet access services in Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Texas, Wisconsin, and Wyoming (17%); and Mega Broadband Investment Holdings, LLC (MBI), a Delaware limited liability company that provides cable/video, broadband Internet access, telecommunications, and/or interconnected VoIP services in 16 states¹⁹ through its subsidiaries operating under the Vyve Broadband name (45%).²⁰ Clearwave wholly owns Delta Communications, LLC d/b/a/ Clearwave Communications (Delta), an Illinois limited liability company and competitive LEC that offers voice and/or Internet services in Illinois, Kansas, and Missouri.²¹ Delta, a designated ETC in Illinois, receives Rural Broadband Experiment support.²² Delta also wholly owns Hargray of Georgia LLC, a South Carolina limited liability company and competitive LEC that offers cable/video, voice, and/or broadband Internet access services in Georgia, and Hargray of Florida LLC, a Georgia limited liability company and competitive LEC that offers cable/video, voice, and/or broadband Internet access services in Florida.²³ Nextlink, a designated ETC, receives Connect America Fund Phase II Auction support in Illinois, Iowa, Kansas, Nebraska, Oklahoma, and Texas.²⁴ Nextlink also receives RDOF support in Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Texas, Wisconsin, and Wyoming.²⁵ There are no persons or entities with a 10% or greater direct or indirect ownership in Cable One.²⁶ Other than what is set forth in the Application, neither Cable One nor any of its affiliates or subsidiaries owns or controls 10% or greater direct or indirect interest in any other domestic telecommunications provider.²⁷

Pursuant to the terms of the asset purchase agreement, Cable One will purchase substantially all of Nova's assets and customers, including customer accounts and receivables, and customer agreements and contracts, vendor agreements and contracts, equipment, and intellectual property.²⁸ Applicants state that Cable One will acquire and assume all of Nova's benefits and obligations under the Commission's RDOF program, including any RDOF support currently held by Nova and all assets and facilities that have been acquired, maintained, or upgraded by Nova using RDOF support.²⁹ Applicants also state that VoIP LLC will "assume sole responsibility for complying with the universal service fund

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 11. The states in which MBI operates are: Alabama; Arkansas; California; Colorado; Georgia; Idaho; Kansas; Louisiana; Nebraska; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; Washington; and Wyoming. *Id.*

²⁰ *Id.* at 10-11.

²¹ *Id.* at 10.

²² Nov. Supplement at 2. Delta also participates in the Lifeline program in Illinois. *Id.*

²³ Application at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 11.

²⁸ Application at 3.

²⁹ Application at 3. Applicants explain that upon consummation of the proposed transaction, Nova will relinquish its ETC designation and will no longer receive any RDOF support. *Id.* at 4.

requirements and Commission rules applicable to the receipt of the RDOF support, regardless of any pre-existing or reasonably foreseeable conditions that could impact VoIP LLC's ability to meet its obligations in the future, including technical, marketplace, and on-the-ground conditions."³⁰ Moreover, Applicants assert that post transaction, all of the obligations associated with the RDOF support originally awarded to Nova will be fulfilled by VoIP LLC, an authorized recipient of RDOF support in Idaho and Louisiana.³¹ Applicants explain that consummation of the transaction is contingent upon, among other things, receipt of all necessary regulatory approvals.³² Finally, Applicants note that VoIP LLC currently holds irrevocable standby letters of credit (LOC) and bankruptcy opinion letters for the RDOF support it receives in the states of Idaho and Louisiana.³³ Applicants assert that VoIP LLC acknowledges and understands that it must submit and have approved by the Universal Service Administrative Company (USAC) an LOC and bankruptcy opinion letter for the assumption of Nova's RDOF support in the state of Illinois consistent with the Commission's RDOF requirement for such letters.³⁴

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.³⁵ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³⁶ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³⁷

³⁰ Apr. Supplement at 1.

³¹ Application at 4; *see also Rural Digital Opportunity Fund Support Authorized for 513 Winning Bids; Bid Defaults Announced*, WC Docket No. 19-126 et al., Public Notice, 37 FCC Rcd 7271, Attach. at 6-7 (WCB/OEA 2022) (authorizing VoIP LLC to receive \$3,225,684 in RDOF support to serve 270 census blocks in Idaho and \$3,615 in RDOF support to serve 4 eligible census blocks in Louisiana).

³² Application at 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *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*)).

³⁶ *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).

³⁷ *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*

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Applicants state that there will be no physical overlap in service areas or fiber facilities or reduction in service providers in any markets as a result of the transaction.³⁸ Second, we expect no potential harm to existing customers to result from the transaction. Applicants attest that the “transaction will be conducted in a manner that will be transparent to Nova’s existing customers” and upon consummation of the transaction, “Assignees will provide the acquired Nova customers with the same service quality and they will continue to receive the same services without any immediate changes to those service offerings, rates, terms, or conditions.”³⁹

Assignees commit to meeting all public interest and performance obligations associated with the receipt of Nova’s RDOF support,⁴⁰ and the record indicates that VoIP LLC has the technical, financial, and managerial expertise to do so after the consummation of the transaction.⁴¹ VoIP LLC will be financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF support, and we expect that the proposed transaction will not negatively impact the ability of VoIP LLC to meet these obligations.⁴² Assignees state they will “utilize the same management and resources to provide RDOF-supported services in Illinois as the Commission previously approved for the provision of RDOF-supported services in Idaho and Louisiana” and “expect to retain the majority of Nova’s current management and employees” post consummation of the transaction.⁴³ In addition, Assignees affirm they “intend to continue the buildout efforts initiated by Nova in its RDOF-supported territory using the same technology and buildout plans previously approved by the Commission.”⁴⁴ Assignees also affirm they will not assume any new debt in connection with the transaction, and the transaction will not affect VoIP LLC’s financial or operational ability to provide RDOF-supported services in Illinois or its existing RDOF-supported services in Idaho and Louisiana.⁴⁵ 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.⁴⁶ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.⁴⁷ Where potential harms appear unlikely, as is the

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).

³⁸ Application at 8.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 3, 5, 7-8.

⁴¹ *Id.* at 5, 7-8.

⁴² *Id.*

⁴³ *Id.* at 5.

⁴⁴ *Id.*

⁴⁵ *Id.* at 5, 7-8.

⁴⁶ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

⁴⁷ See *id.* at 9237-38, paras. 275-76.

case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.⁴⁸

Applicants state that the proposed transaction is consistent with the public interest.⁴⁹ Applicants aver that approval of the transaction “will advance economic efficiency by enabling Assignees to achieve economies of scale and expand their offerings and services to a broader customer base.”⁵⁰ Applicants assert that the transaction will “enable Assignees to strengthen their competitive position to the benefit of consumers and the communications marketplace.”⁵¹ Applicants further assert that the existing customers of Nova will benefit from the transaction as they would have access to the expanded service offerings available from Assignee.⁵² Moreover, we agree that “VoIP LLC’s assumption of Nova’s RDOF obligations will support the Commission’s goals of ensuring all areas of the United States have access to robust broadband services.”⁵³

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,⁵⁴ and accelerating private sector deployment of advanced services is one of the aims of the Act.⁵⁵ In light of the Assignees’ commitments to meet all of Nova’s federal high-cost support obligations⁵⁶ and that Nova’s existing customers will “have access to the expanded service offerings available from Assignees” as a result of the transaction,⁵⁷ 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 RDOF Support

As explained herein, we find that VoIP LLC⁵⁸ has sufficiently demonstrated its managerial, financial, and technological capabilities to meet its RDOF obligations to serve 24 eligible census blocks in Illinois (Assigned Blocks),⁵⁹ and accordingly, we conditionally authorize VoIP LLC to receive the transferred support conditioned upon consummation of the approved transaction within two months of the release of this order and upon satisfaction of the following prerequisites within three months from

⁴⁸ See *id.*

⁴⁹ Application at 7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

⁵⁵ 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”)).

⁵⁶ Application at 5, 7, 13.

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 4 (stating that after consummation of the transaction, “all of the obligations associated with the RDOF support originally awarded to Nova will be fulfilled by VoIP LLC”).

⁵⁹ A specific list of the census block identifiers for each of these 24 census blocks is available at Results, Auction 904 Long-Form Applicants (updated Jan. 13, 2023), <https://www.fcc.gov/auction/904>.

the date of consummation: 1) designation as an ETC in the Assigned Blocks for the purpose of becoming eligible to receive the transferred support; 2) submission and approval of an irrevocable LOC securing the requisite amount of support for the Assigned Blocks; and 3) submission and approval of a new supporting Bankruptcy Opinion Letter.⁶⁰ Applicants must file notice of the consummation of the transaction within 10 calendar days of the consummation in ECFS under WC Docket No. 23-353 and WC Docket No. 10-90. Applicants should also email a copy of this notice directly to Megan Danner at megan.danner@fcc.gov and to Nissa Laughner at nissa.laughner@fcc.gov. VoIP LLC should submit the proof of ETC designation, the LOC, and the supporting Bankruptcy Opinion Letter to USAC for review and approval.

If all of these prerequisites are satisfied, the authorization of VoIP LLC to receive the transferred RDOF support will become effective. At that time, USAC will transfer all future support payments (and any withheld payments, as applicable) to VoIP LLC as of the next month following the authorization or as soon as reasonably practical thereafter. The Bureau will announce the date that this authorization became effective in a monthly release. Pending the effective date of VoIP LLC's authorization, Nova must maintain the irrevocable LOC securing the transferred support, and it will continue to receive the monthly disbursements associated with the Assigned Blocks and retain sole responsibility for complying with universal service fund requirements and Commission rules associated with the Assigned Blocks. Unless otherwise specified in this Public Notice, all support and assets associated with the Assigned Blocks must be transferred from Nova to VoIP LLC, including payments received by Nova pending VoIP LLC's authorization.

We remind VoIP LLC that once it satisfies all conditions of ETC authorization, it assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact its ability to meet its obligations in the future, including technical, marketplace, and on-the-ground conditions. Indeed, any carrier seeking authorization to receive high-cost support pursuant to a section 214 transfer of control 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 RDOF requirements, including default recovery of support and potential forfeiture penalties.⁶¹ In addition, VoIP LLC must meet all administrative, performance, and deployment obligations and deadlines associated with the receipt of RDOF support as well as related ETC obligations,⁶² including the requirement to deploy voice and

⁶⁰ If the Applicants do not consummate the transaction and/or VoIP LLC fails to meet all prerequisites for this conditional RDOF authorization within the timeframes specified above, VoIP LLC will no longer qualify for a conditional RDOF authorization. If Applicants fail to consummate the transaction within the two-month timeframe specified above for conditional authorization, 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 No. 23-353 and WC Docket No. 10-90. If subsequent to the timeframes specified above, the Bureau finds that VoIP LLC has met all conditions for authorization, it will issue a separate final authorization.

⁶¹ See *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 713-16, paras. 58-64 (2020) (*RDOF Report and Order*) (adopting non-compliance measures); *id.* at 715-16, para. 63 (stating that in addition to default consequences, RDOF support recipients are subject to sanctions "including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment"); see also 47 CFR §§ 54.320(c)-(d), 54.804(c)(4), 54.806(c).

⁶² 47 CFR §§ 54.802-806; see also generally *RDOF Report and Order*, 35 FCC Rcd 686. The Bureau has provided a summary of the various obligations of authorized RDOF support recipients in prior authorization public notices, including in the public notice authorizing the support recipient to receive the relevant RDOF support. As stated in these public notices, the list is not intended to be comprehensive, and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and

broadband service meeting minimum standards to the requisite number of locations by specific service milestones and the obligation to ultimately serve all locations identified by the Commission within eligible areas, subject to limited adjustment.⁶³ Consistent with the requirements of RDOF, VoIP LLC must provide voice service throughout the Assigned Blocks, either through its own facilities or a combination of its own and other ETCs' facilities, on the first day of the month following the authorization.⁶⁴

Grant of the Application

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.⁶⁵ This Application is granted in conjunction with the conditional authorization of VoIP LLC to receive RDOF support as set out in this Public Notice.

Pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, we grant the Application. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information regarding the grant of the Application, please contact Megan Danner at megan.danner@fcc.gov. For further information regarding the conditional RDOF support authorization, please contact Nissa Laughner at nissa.laughner@fcc.gov.

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the Commission's rules. See *RDOF Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 4897, 4897 (WCB/OEA/RBATF 2022). We note that in addition to the requirements and rules specified in the public notices, RDOF support recipients must test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on high-cost performance requirements. See *RDOF Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6083, para.15 (2020); *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (expanding performance measure testing requirements); *Connect America Fund*, WC Docket No. 10-90, Order, 35 FCC Rcd 14658 (2020) (clarifying certain performance measure requirements); *Connect America Fund et al.*, WC Docket No. 10-90 et al., WT Docket No. 10-208, Notice of Proposed Rulemaking and Report and Order, FCC 23-87 at 62-63, paras. 136-140 (Oct. 20, 2023) (modifying certain performance measure requirements).

⁶³ Specifically, RDOF support recipients must deploy service to an increasing percentage of the CAM-estimated number of locations as of December 31st of each year, beginning with a 40% milestone as of the third year of receiving support (2025), 60% as of the fourth year (2026), 80% as of the fifth year (2027), and 100% as of the sixth year (2028). 47 CFR § 54.802(c); *RDOF Report and Order*, 35 FCC Rcd at 709-12, paras. 45-55. The Commission will then adjust the initial defined deployment obligation assigned to each RDOF support recipient based on its determination of the number of locations within the supported area. In addition, the support recipient must serve, upon reasonable request, newly qualifying locations until the end of the eighth year of support (2030). See *RDOF Report Order*, 35 FCC Rcd at 710-11, paras. 49-50; 47 CFR § 54.802(c).

⁶⁴ See *RDOF Report and Order*, 35 FCC Rcd at 745, para. 139.

⁶⁵ See 47 U.S.C. § 214(a); 47 CFR § 63.03.



Federal Communications Commission
Washington, D.C. 20554

April 25, 2024

DA 24-390
In Reply Refer to:
1800B3-RDM
Released: April 25, 2024

Lajefa Community Radio
PO Box 1433
Wylie, TX 75098
(sent by electronic mail to: kkvi104.1fm@gmail.com)

REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD 21837
(sent by electronic mail to: lpfm@recnet.com)

In re: **Lajefa Community Radio**
New LPFM, Greenville, TX
Facility ID No. 788573
Application File No. 0000232748

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Lajefa Community Radio (Lajefa) for a construction permit for a new low power FM (LPFM) station at Greenville, Texas (Application).¹ We also have before us an Informal Objection filed by REC Networks (REC), seeking dismissal of the Application (Objection).² For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. Lajefa filed the Application during the 2023 LPFM Filing Window.³ Lajefa certifies in the Application that it is a nonprofit educational institution or organization.⁴ In the Objection, REC argues that the Application fails to include required documentation demonstrating that the applicant

¹ Application File No. 0000232748.

² Pleading File No. 0000236741 (filed Jan. 26, 2024). The Objection did not indicate whether it was served on Lajefa. Accordingly, the Bureau forwarded a copy of the Objection to Lajefa, affording it 15 days in which to file an opposition, consistent with the Bureau's practice. See Email from Ryan McClafferty, Attorney Advisor, Audio Division, FCC Media Bureau to Lajefa Community Radio (Jan. 30, 2024, 17:02 EDT). Lajefa filed a Motion for Extension of Time. See Pleading File No. 0000238847 (filed Feb. 12, 2024). REC filed a Supplement opposing the Motion for Extension of Time. See Pleading File No. 0000238861 (filed Feb. 13, 2024). Lajefa did not file an opposition to the Objection.

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

⁴ See Application at Legal Certifications section, Eligibility Certifications questions.

organization is a nonprofit educational institution or organization recognized under state law.⁵ REC contends that the “Organizational Document” submitted by Lajefa does not bear “a state stamp or other indicia which would normally include a state assigned file number and the date for which the application was filed with the state.”⁶ REC notes that a search of the Texas Comptroller of Public Accounts database of corporations shows no entity named “Lajefa Community Radio.”⁷ REC further argues that if Lajefa is an unincorporated association, it has failed to submit the requisite documentation demonstrating that it is recognized in its relevant jurisdiction and meets the requirements for unincorporated associations under state law.⁸ Thus, REC argues, the Application fails to demonstrate that Lajefa is an entity eligible to hold an LPFM license.⁹

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁰ 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.¹¹

An LPFM applicant must meet basic eligibility requirements¹² and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).¹³ Specifically, each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law.¹⁴ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under state law at the time its application is submitted.¹⁵ Each applicant must submit

⁵ See Objection at 2 (citing *Procedures Public Notice* at 6 and *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 at para. 14 (2013) (“An LPFM applicant’s status as a valid non-profit organization at the time it files its application is fundamental to our determination of the applicant’s qualifications to hold an LPFM authorization.”)).

⁶ See Objection at 2 (citing Application at Attach. “TX Greenville Organizational Document.pdf”).

⁷ See Objection at 2.

⁸ See *id.*

⁹ See *id.* REC also contends that “commonalities” in the contact information provided with the Application and another application (Application File No. 0000232745) filed during the 2023 LPFM Filing Window indicates prohibited LPFM cross-ownership. See Objection at 3. Because we resolve REC’s Objection on other grounds, and concurrently dismiss the other application by separate action, this argument is moot and will not be considered.

¹⁰ 47 U.S.C. § 309(d).

¹¹ 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).

¹² See 47 CFR § 73.853(a); see also 47 U.S.C. § 397(6)(A).

¹³ See Instructions for LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications section, Eligibility Certifications questions.

¹⁴ See *id.* See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213-2215 (2000).

¹⁵ See *id.* See also 47 U.S.C. § 397(6)(A).

an explanatory exhibit establishing its nonprofit status in connection with its application.¹⁶ The *Procedures Public Notice* instructs nonprofit educational organization applicants to “submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”¹⁷ Applicants that neglect to provide the requisite eligibility documentation are subject to dismissal.¹⁸

In the Application, Lajefa certifies that it is a nonprofit educational institution or organization,¹⁹ but neglects to provide sufficient evidence, as required, demonstrating that it is recognized as a nonprofit educational institution or organization by a state. Lajefa includes an “Organizational Document” with its Application stating that it is a non-stock, not-for-profit foundation organized under the laws of the State of Texas.²⁰ However, the “Organizational Document” bears no evidence that it has been filed and accepted by a state, and thus does not establish Lajefa’s status as a valid non-profit organization. Additionally, a search of the Texas Comptroller of Public Accounts database by the Bureau staff shows no incorporated entity with the name “Lajefa Community Radio.”²¹ Therefore, we find that Lajefa has failed to demonstrate that it was organized as a nonprofit entity, either incorporated or unincorporated, in a form recognized by Texas, or any other state, at the time it filed the Application. Accordingly, we find Lajefa ineligible to hold an LPFM license, grant the Objection, and dismiss the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on January 26, 2024 (Pleading File No. 0000236741) by REC Networks **IS GRANTED**.

IT IS FURTHER ORDERED that the application of Lajefa Community Radio for a construction permit for a new low power FM station at Greenville, Texas (Application File No. 0000232748) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Jim Turvaville (jimturbo61@gmail.com)
(Technical Representative for Lajefa Community Radio)

¹⁶ See LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also *Procedures Public Notice* at 6.

¹⁷ See *Procedures Public Notice* at 6.

¹⁸ See *id.*

¹⁹ See Application at Legal Certifications section, Eligibility Certifications questions.

²⁰ See Application at Attach. “TX Greenville Organizational Document.pdf”.

²¹ Texas Comptroller of Public Accounts, Taxable Entity Search, <https://mycpa.cpa.state.tx.us/coa/> (last visited Apr. 18, 2024).



Federal Communications Commission
Washington, D.C. 20554

April 25, 2024

DA 24-391
In Reply Refer to:
1800B3-RDM
Released: April 25, 2024

Alert Community Broadcasting
PO Box 1433
Wylie, TX 75098
(sent by electronic mail to: kkvi104.1fm@gmail.com)

REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD 21837
(sent by electronic mail to: lpfm@recnet.com)

In re: **Alert Community Broadcasting**
New LPFM, Princeton, TX
Facility ID No. 788500
Application File No. 0000232745

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Alert Community Broadcasting (Alert) for a construction permit for a new low power FM (LPFM) station at Princeton, Texas (Application).¹ We also have before us an Informal Objection filed by REC Networks (REC), seeking dismissal of the Application (Objection).² For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. Alert filed the Application during the 2023 LPFM Filing Window.³ Alert certifies in the Application that it is a nonprofit educational institution or organization.⁴ In the Objection, REC argues that the Application fails to include required documentation demonstrating that the applicant

¹ Application File No. 0000232745.

² Pleading File No. 0000236740 (filed Jan. 26, 2024). The Objection did not indicate whether it was served on Alert. Accordingly, the Bureau forwarded a copy of the Objection to Alert, affording it 15 days in which to file an opposition, consistent with the Bureau's practice. See Email from Ryan McClafferty, Attorney Advisor, Audio Division, FCC Media Bureau to Alert Community Broadcasting (Jan. 30, 2024, 17:02 EDT). Alert filed a Motion for Extension of Time. See Pleading File No. 0000238849 (filed Feb. 12, 2024). REC filed a Supplement opposing the Motion for Extension of Time. See Pleading File No. 0000238863 (filed Feb. 13, 2024). Alert did not file an opposition to the Objection.

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

⁴ See Application at Legal Certifications section, Eligibility Certifications questions.

organization is a nonprofit educational institution or organization recognized under state law.⁵ REC contends that the “Organizational Document” submitted by Alert does not bear “a state stamp or other indicia which would normally include a state assigned file number and the date for which the application was filed with the state.”⁶ REC notes that a search of the Texas Comptroller of Public Accounts database of corporations shows no entity named “Alert Community Broadcasting.”⁷ REC further argues that if Alert is an unincorporated association, it has failed to submit the requisite documentation demonstrating that it is recognized in its relevant jurisdiction and meets the requirements for unincorporated associations under state law.⁸ Thus, REC argues, the Application fails to demonstrate that Alert is an entity eligible to hold an LPFM license.⁹

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁰ 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.¹¹

An LPFM applicant must meet basic eligibility requirements¹² and certify its eligibility to own and operate an LPFM station at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).¹³ Specifically, each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law.¹⁴ Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under state law at the time its application is submitted.¹⁵ Each applicant must submit

⁵ See Objection at 2 (citing *Procedures Public Notice* at 6 and *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 at para. 14 (2013) (“An LPFM applicant’s status as a valid non-profit organization at the time it files its application is fundamental to our determination of the applicant’s qualifications to hold an LPFM authorization.”)).

⁶ See Objection at 2 (citing Application at Attach. “TX Princeton Organizational Document.pdf”).

⁷ See Objection at 2.

⁸ See *id.*

⁹ See *id.* REC also contends that “commonalities” in the contact information provided with the Application and another application (Application File No. 0000232748) filed during the 2023 LPFM Filing Window indicates prohibited LPFM cross-ownership. See Objection at 3. Because we resolve REC’s Objection on other grounds, and concurrently dismiss the other application by separate action, this argument is moot and will not be considered.

¹⁰ 47 U.S.C. § 309(d).

¹¹ 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).

¹² See 47 CFR § 73.853(a); see also 47 U.S.C. § 397(6)(A).

¹³ See Instructions for LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications section, Eligibility Certifications questions.

¹⁴ See *id.* See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213-2215 (2000).

¹⁵ See *id.* See also 47 U.S.C. § 397(6)(A).

an explanatory exhibit establishing its nonprofit status in connection with its application.¹⁶ The *Procedures Public Notice* instructs nonprofit educational organization applicants to “submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”¹⁷ Applicants that neglect to provide the requisite eligibility documentation are subject to dismissal.¹⁸

In the Application, Alert certifies that it is a nonprofit educational institution or organization,¹⁹ but neglects to provide sufficient evidence, as required, demonstrating that it is recognized as a nonprofit educational institution or organization by a state. Alert includes an “Organizational Document” with its Application stating that it is a non-stock, not-for-profit foundation organized under the laws of the State of Texas.²⁰ However, the “Organizational Document” bears no evidence that it has been filed and accepted by a state, and thus does not establish Alert’s status as a valid nonprofit organization. Additionally, a search of the Texas Comptroller of Public Accounts database by the Bureau staff shows no incorporated entity with the name “Alert Community Broadcasting.”²¹ Therefore, we find that Alert has failed to demonstrate that it was organized as a nonprofit entity, either incorporated or unincorporated, in a form recognized by Texas, or any other state, at the time it filed the Application. Accordingly, we find Alert ineligible to hold an LPFM license, grant the Objection, and dismiss the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on January 26, 2024 (Pleading File Nos. 0000236740) by REC Networks **IS GRANTED**.

IT IS FURTHER ORDERED that the application of Alert Community Broadcasting for a construction permit for a new low power FM station at Princeton, Texas (Application File No. 0000232745) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Jim Turvaville (jimturbo61@gmail.com)
(Technical Representative for Alert Community Broadcasting)

¹⁶ See LPFM Application, Legal Certifications section, Eligibility Certifications questions. See also *Procedures Public Notice* at 6 .

¹⁷ See *Procedures Public Notice* at 6.

¹⁸ See *id.*

¹⁹ See Application at Legal Certifications, Eligibility Certifications.

²⁰ See Application at Attach. “TX Princeton Organizational Document.pdf”.

²¹ Texas Comptroller of Public Accounts, Taxable Entity Search, <https://mycpa.cpa.state.tx.us/coa/> (last visited Apr. 18, 2024).

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6961047
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: April 24, 2024**Released: April 25, 2024**

By the Associate Division Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

¹ See Informal Complaint No. 6961047 (Apr. 12, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from AT&T to Clear Rate without her authorization.⁹ Complainant explained that she and her mother, who is 92 years old, set up a new account with AT&T in December 2023 and were told they would receive the same services they had with their previous carrier. Complainant stated that her mother "received a call from Clear Rate Communications a few days after transferring her number to AT&T. The person who called led her to believe she was speaking with someone from AT&T. With that said, she erroneously agreed to the services."¹⁰ Complainant stated that a Clear Rate's representative stated to her that "her mother's number will not be released until the past due balance is paid."¹¹ Complainant explained that in her attempts to cancel the account, "I have been lied to and hung up on. My concerns and request for cancellation have been ignored. . . . [M]y mother is 92 years old, and not being able to call family and/or friends for help if needed could be detrimental."¹² Complainant stated that "she wants her mother's telephone number released without being forced to pay for services that never should have been with [Clear Rate] in the first place."¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹⁴ Clear Rate responded, stating that they do not disclose any information to individuals who are not the account holder. It did not, however, provide the recording or any other evidence of authorization.¹⁵ The failure of Clear Rate to provide proof of verification is presumed to be clear and convincing evidence of a violation.¹⁶ Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

⁷ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

⁸ See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

⁹ See Informal Complaint No. 6961047.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁵ See Clear Rate Response to Informal Complaint No. 6961047 (Apr. 15, 2024); see also 47 CFR § 64.1160.

¹⁶ See 47 CFR § 64.1150(d).

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁷ We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁸

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁹ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.²⁰ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.²¹

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana Bowers
Associate Division Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

¹⁷ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁸ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹⁹ *See id.* § 64.1160(b).

²⁰ *See id.* § 64.1160(d).

²¹ *See id.* §§ 64.1140, 64.1160.



PUBLIC NOTICE

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

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

DA 24-393
April 26, 2024

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

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

The Region 21 (Michigan)¹ 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, May 16, 2024. Beginning at 10:00 am, the Region 21 800 MHz RPC meeting will convene at the Hartland Area Fire Department, 3205 Hartland Rd., Hartland, MI 48353.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – March 14, 2024 meeting
- Correspondence
- Review of Applications
 - Old Applications
 - New Applications
 - City of Dearborn – renewal, WPIH508/WPMQQ523
 - State of Michigan – Deward
- 800 MHz Subcommittee Reports
 - Interoperable Communication Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Committee
- Old Business
 - Website
 - 4.9 GHz
- New Business
 - Other
- Next meeting: July 18, 2024 – Roscommon Road Commission
- Adjourn

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

The agenda for the 700 MHz meeting includes:

- Call to Order/Roll Call
- Approval of Agenda

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

- Approval of Minutes – March 14, 2024 meeting
- Correspondence
- Review of Applications
 - Old Applications
 - State of MI – Berrien Simulcast (adjacent region notification)
 - New Applications
- 700 MHz Subcommittee Reports
 - Interoperable Communications Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Subcommittee
- Old Business
 - 700 MHz IO Channels Encryption
 - FCC Response
 - Letter to SWIC
- New Business
- Next meeting: July 18, 2024 – Roscommon Road Commission
- Adjourn

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

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

Keith M. Bradshaw
 Chair, Region 21 700 MHz and 800 MHz RPCs
 Oakland County Radio Communications Supervisor
 1200 N. telegraph Rd, building 16E
 Pontiac, MI 48341
 Ph: 248-452-9769
bradshawkm@oakgov.com

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-394

Released: April 26, 2024

ENFORCEMENT BUREAU REQUESTS LETTERS OF INTENT TO BECOME THE REGISTERED INDUSTRY CONSORTIUM FOR TRACEBACKS

EB Docket No. 20-22

Letters of Intent Date: May 29, 2024.

Comment Date: June 12, 2024.

Reply Comments Date: June 19, 2024.

The Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) required the Federal Communications Commission (Commission) to “issue rules to establish a registration process for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”¹ Commission rules require any new consortium that seeks to be selected as the single registered consortium to file a Letter of Intent to conduct private-led traceback efforts.² The incumbent is not required to file a Letter of Intent.³ The Commission’s rules require the Enforcement Bureau (Bureau) to issue a public notice, no later than April 28th of each year, seeking such registrations.⁴

By this Public Notice, the Bureau requests interested consortia to provide Letters of Intent in accordance with the Commission’s rules and the *Consortium Registration Order*. We also invite comment on those Letters of Intent.

Background. Unlawful prerecorded or artificial voice message calls—robocalls—plague the American public. In many instances, unlawful robocalls include inaccurate or misleading caller identification information, known as spoofed caller ID. The spoofed caller ID makes it more difficult to identify the source of the call. In order to enforce the laws prohibiting illegal robocalls, government and industry work together to trace unlawful spoofed robocalls to their origination—a process known as “traceback.” Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and, in section 13(d) of the TRACED Act, required the Commission to register a single consortium to conduct private-led efforts to trace back suspected unlawful robocalls.

¹ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Pub. L. No. 116-105, § 13(d)(1), 133 Stat. 3274, 3287 (2019).

² 47 CFR § 64.1203(b).

³ *Id.* § 64.1203(c); see also *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3113, 3116, para. 12 (2020) (*Consortium Registration Order*).

⁴ 47 CFR § 64.1203(a); see also *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 9.

The Commission established a set of principles for the Bureau to use in selecting the registered consortium and to ensure that the registered consortium complies with the statutory requirements.⁵ The current registered consortium is USTelecom – The Broadband Association’s Industry Traceback Group.⁶

Letter of Intent Requirements. The TRACED Act requires that the Commission seek registrations for the traceback consortium on an annual basis.⁷ The Bureau requests interested consortia, other than the incumbent registered consortium, to provide Letters of Intent in accordance with the Commission’s rules and the *Consortium Registration Order*.⁸ The Letter of Intent must demonstrate that the interested consortium satisfies the statutory and regulatory requirements necessary to serve as the single registered consortium.

Any interested consortium must: (1) demonstrate that it is a neutral third party; (2) demonstrate that it is competent to manage the private-led traceback efforts; (3) include its written best practices, and an explanation thereof, regarding management of its traceback efforts and the participation of voice services providers in the consortium’s traceback efforts; (4) certify that, consistent with section 222(d)(2) of the Communications Act, the consortium’s efforts will focus on fraudulent, abusive, or unlawful traffic; and (5) certify that the consortium has notified the Commission that it intends to conduct traceback efforts in advance of registration as the single registered consortium.⁹ The Letter of Intent must also include a certification that, if selected to be the single registered consortium, the consortium will remain in compliance with the statutory requirements; conduct an annual review for compliance; and promptly notify the Commission of any changes that reasonably bear on its certification.¹⁰ The Bureau will select as the single registered consortium, the entity that best meets these requirements and the principles the Commission identified in the *Consortium Registration Order*.¹¹

The incumbent registered consortium does not need to file a new Letter of Intent.¹² The certifications contained in the registered consortium’s initial Letter of Intent will continue in effect for each subsequent year unless the incumbent consortium notifies the Commission otherwise in writing on or before May 29, 2024.¹³ If any entity files a Letter of Intent, the Bureau seeks comment on each of the applicants, including the incumbent (see instructions below). The Bureau will select the single registered consortium by August 22, 2024.

Registration Process. Letters of Intent must be submitted electronically via ECFS (<https://www.fcc.gov/ecfs/>) in EB Docket No. 20-22. If consortia wish to include confidential information as part of their Letters of Intent, they must submit: (1) a redacted, public version via ECFS; and (2) a non-redacted, confidential version electronically to the Enforcement Bureau. Filing consortia should contact Kristi Thompson by phone at (202) 418-1318 or e-mail at kristi.thompson@fcc.gov to arrange electronic submission of the non-redacted version. The confidential material must be marked

⁵ *Consortium Registration Order*, 35 FCC Rcd at 3117-22, paras. 15-29 (discussing the Commission’s interpretation of section 13(d) of the TRACED Act).

⁶ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 23-719, 2023 WL 5358422, at *1, para. 1 (EB Aug. 18, 2023) (“In this Order, the Enforcement Bureau (Bureau) selects the incumbent, the Industry Traceback Group established by USTelecom – The Broadband Association (collectively, USTelecom or Traceback Group), to continue as the registered consortium for private-led traceback efforts.”).

⁷ See TRACED Act § 13(d)(2).

⁸ See 47 CFR § 64.1203(b); *Consortium Registration Order*, 35 FCC Rcd at 3115, paras. 10-11.

⁹ See 47 CFR § 64.1203(b)(1)-(4); *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 11.

¹⁰ See 47 CFR § 64.1203(b)(5); see also *Consortium Registration Order*, 35 FCC Rcd at 3116, para. 13.

¹¹ See *Consortium Registration Order*, 35 FCC Rcd at 3117-21, paras. 15-28.

¹² See 47 CFR § 64.1203(c).

¹³ *Id.*

with specificity and requests for confidential treatment also must conform to the other requirements of section 0.459 of the Commission's rules.¹⁴ The redacted public version of the document should provide sufficient information to allow members of the public to comment meaningfully.

Deadline to Submit Letters of Intent. May 29, 2024.

Ex Parte Rules. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.¹⁵ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in their 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).¹⁶ Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.¹⁷

Request for Comments and Reply Comments on Selection of Traceback Consortium. The Bureau invites interested parties to comment on the submission of Letters on Intent filed by interested consortia, as well as on the continuation of USTelecom – The Broadband Association's Industry Traceback Group as the single registered consortium. Interested parties may file comments on or before June 12, 2024, and reply comments on or before June 19, 2024.

Submission Process. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁸

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
- 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.
- Commercially delivered mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701, U.S.

¹⁴ *Id.* § 0.459.

¹⁵ *Id.* §§ 1.1200 *et seq.*

¹⁶ *Id.* § 1.49(f).

¹⁷ *Id.* §§ 1.1200 *et seq.*

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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

Deadline to Submit Comments. June 12, 2024.

Deadline to Submit Reply Comments. June 19, 2024.

Additional Information. For further information, contact Kristi Thompson, Chief, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-1318 or kristi.thompson@fcc.gov.



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WASHINGTON D.C. 20554

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DA No. 24-395

Report No. SAT-01819

Friday April 26, 2024

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MOD-20240227-00042	E	S2385	Intelsat License LLC	02/29/2024 - 09/30/2024
Modification				
Grant of Authority				Effective Date: 04/24/2024

Nature of Service: Fixed Satellite Service

On April 24, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for modification of the authorization for Galaxy 14 in order to extend the license term through September 30, 2024. Galaxy 14 provides fixed-satellite service at the 32.9° E.L. orbital location in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) bands. Intelsat also conducts telemetry, tracking, and command operations for Galaxy 14 using the following center frequencies: 4198.0 MHz and 4199.875 MHz (space-to-Earth); and 6420.5 MHz (Earth-to-space).

SAT-STA-20231204-00301	E	S3069	Space Exploration Holdings, LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

Application listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules.

SAT-STA-20240213-00028	E		Space Exploration Holdings, LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

Application listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules.

SAT-STA-20240322-00062	E		Umbra Lab Inc	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

On April 25, 2024, the Satellite Programs and Policy Division granted, with conditions, Umbra Lab, Inc.'s request for special temporary authority, for an additional period of up to 60 days, to continue operations of the Umbra-04 space station in the earth exploration-satellite service at an orbit with a perigee altitude as low as 325 km.

SAT-STA-20240409-00077	E	S3069	Space Exploration Holdings, LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

On April 25, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX), for special temporary authority for a period of up to 60 days to operate a radiofrequency beacon with up to 56 SpaceX second generation non-geostationary-orbit Starlink satellites on each launch, and up to a maximum of 300 simultaneously operating satellites, in order to track and maintain satellite positional information during satellite orbit-raising and for emergency operations once at operational orbit.

SAT-STA-20240418-00084	E	S3069	Space Exploration Holdings, LLC	
Special Temporary Authority				
Withdrawn				Effective Date: 04/19/2024

SAT-STA-20240418-00085	E	S3069	Space Exploration Holdings, LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

On April 25, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX) for a period of up to 60 days to conduct communications between SpaceX's second generation non-geostationary orbit Starlink satellites and gateway earth stations in the E-band, specifically the 71.0-76.0 GHz (space-to-Earth) and 81.0-86.0 GHz (Earth-to-space) bands.

SAT-STA-20240419-00086	E	S3066	Intelsat License LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/24/2024

Nature of Service: Fixed Satellite Service

On April 24, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 60 days, for the Intelsat 40e space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

SAT-STA-20240419-00087	E	S3092	Astranis Projects USA LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 04/25/2024

On April 25, 2024, the Satellite Programs and Policy Division granted, with conditions, Astranis Projects USA LLC's request for special temporary authority for up to 30-days to conduct telemetry, tracking and command (TT&C) in order to maintain the Arcturus space station at the 78° E.L. orbital location. TT&C is performed using the 19701-19703 MHz and 19704-19706 MHz (space-to-Earth), and 28351-28353 MHz and 28354-28356 MHz (Earth-to-space) frequency bands.

INFORMATIVE

SAT-AMD-20170908-00128	S3017	Hughes Network Systems, LLC
See ICFS File No. SAT-MOD-20221017-00137 for a description of the action.		
SAT-LOA-20170621-00092	S3017	Hughes Network Systems, LLC
See ICFS File No. SAT-MOD-20221017-00137 for a description of the action.		
SAT-MOD-20221017-00137	S3017	Hughes Network Systems, LLC

INFORMATIVE

On April 22, 2024, the Satellite Programs and Policy Division determined that Hughes Network Systems, LLC met the launch and begin operations milestone associated with its grant of authority to construct, deploy, and operate a geostationary space station, EchoStar XXIV (also known as "Jupiter 3") at the 95.2° W.L. orbital location, and may release the bond associated with this authorization. The release of this bond is without prejudice to any Commission action regarding Hughes's pending license modification request, ICFS File No. SAT-MOD-20230424-00095.

SAT-MOD-20240423-00089 S2992 Space Exploration Holdings, LLC

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective April 26, 2024. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
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DA 24-396
Released: April 26, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON EXPANDED FEDERAL USE OF THE NON-FEDERAL FSS AND MSS BANDS

ET Docket No. 24-121

Comment Date: [30 days after FR publication]
Reply Comment Date: [60 days after FR publication]

By the Chief, Office of Engineering and Technology:

By this Public Notice, the Office of Engineering and Technology opens a new docket and seeks comment on ways to potentially expand Federal access to non-Federal, including commercial, satellite services. In recent years, the commercial satellite industry has undergone tremendous growth and innovation. Federal government agencies have increasingly sought to meet their satellite communications needs by using commercial satellite services. However, most spectrum used by commercial satellite systems is not allocated for Federal fixed satellite service (FSS) or mobile satellite service (MSS). The Commission's rules provide that Federal agencies' earth stations communicating with commercial satellite systems in such spectrum must operate on a non-interference basis and do not receive protection from harmful interference. To address this concern, the National Telecommunications and Information Administration (NTIA) in 2006 requested that the Commission initiate a rulemaking to seek comment on granting NTIA-authorized Federal earth stations that are communicating with non-Federal satellites, primary status in some of the bands that are used for commercial satellite services which do not currently have primary Federal FSS or MSS allocations.¹

In response to the NTIA petition the Commission, in 2013, issued a Notice of Proposed Rulemaking (*2013 NPRM*) seeking comment on two proposals that could potentially provide Federal earth stations with interference-protected access to FSS and MSS bands that lack a Federal FSS or MSS allocation: modifying the Allocation Table in section 2.106 of the Commission's rules to add a Federal allocation for the FSS or MSS bands, along with a footnote restricting Federal use to earth stations communicating with non-Federal space stations; or placing a footnote in the Allocation Table in the FSS or MSS bands that would provide Federal earth stations that communicate with non-Federal FSS and MSS space stations interference protection identical to that afforded to non-Federal earth stations communicating with the same FSS and MSS space stations.² However, in the time between the *2013 NPRM* and the subsequent *2021 First Report and Order* the spectrum landscape changed significantly

¹ *Petition for Rulemaking of the National Telecommunications and Information Administration*, RM-11341, filed Aug. 4, 2006 (NTIA Petition).

² *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 6698, 6722, paras. 4, 36-58 (2013) (*2013 NPRM*).

enough for the Commission to determine the record warranted a refresh and the Commission issued a Further Notice of Proposed Rulemaking (2021 FNPRM).³

The 2021 FNPRM generated many comments addressing expanded Federal use of the non-Federal FSS and MSS bands. However, in the 2023 *Second Report and Order* the Commission decided that, rather than addressing this issue in a proceeding largely focused on space launch operations, it would be better to address this issue in a separate proceeding specifically focused on communications between commercial satellites and Federal users.⁴ The 2023 *Second Report and Order* directed OET to issue a public notice opening a new docket for comments on this issue and provide additional context for interested parties to provide additional comments.⁵

With this Public Notice, we invite interested parties to supplement the record with additional comments in this new docket, ET Docket No. 24-121, on possible mechanisms to expand Federal use of the bands used by commercial satellite networks that are not currently allocated for Federal FSS and MSS.⁶ Consistent with the Commission's direction to OET in the 2023 *Second Report and Order*, the record compiled in response to this Public Notice will be considered in conjunction with the existing record on this issue compiled in ET Docket No. 13-115 and RM-11341, which we incorporate herein by reference. In particular, we invite commenters to supplement the record on possible approaches to providing Federal earth stations with interference protection when those earth stations are communicating with commercial satellites in bands that are not allocated for Federal FSS and MSS. As noted above, the 2013 NPRM proposed to add a co-primary Federal FSS or MSS allocation to several bands together with an allocation table footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal space stations.⁷ The 2013 NPRM alternatively proposed to add a footnote to the Allocation Table outlining circumstances under which Federal earth stations operating with non-Federal space stations would be entitled to interference protection.⁸ We seek renewed comment on these proposals. We also seek comment on whether there should be any additional modifications to the Allocation Table in connection with either proposal.

The Satellite Industry Association (SIA) suggested an alternative to the 2013 NPRM's two proposals for providing Federal earth stations with interference protected access to spectrum bands that lack a Federal FSS and MSS allocation. SIA proposed that FSS and MSS allocations be added to the

³ For example, the Spectrum Frontiers, 3.7 GHz Service, and 6 GHz proceedings altered the underlying assumptions about current and expected future uses of many of the frequency bands proposed for possible Federal access to non-Federal satellites in the 2013 NPRM. See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016); *Expanding Flexible Use of the 3.7 and 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020); *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020). Noting that some of the bands under consideration in the 2013 NPRM might no longer be appropriate candidates for expanded Federal FSS or MSS use, and that other bands might support greater Federal use, the 2021 FNPRM sought to refresh the comment record. See *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 7764 paras. 146-151 (2021) (2021 R&O and FNPRM).

⁴ *Allocation of Spectrum for Non-Federal Space Launch Operations*, ET Docket No. 13-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 23-76, 57, para. 153 (adopted Sept. 21, 2023) (*Second R&O and Second FNPRM*).

⁵ *Id.* at 57, para. 153.

⁶ We hereby incorporate by reference the record compiled in ET Docket No. 13-115 and RM-11341 on the issue of expanding Federal use of non-Federal, including commercial, satellites into the record of this proceeding. *Second R&O and Second FNPRM* at para. 153.

⁷ 2013 NPRM, 28 FCC Rcd at 6712-17, paras. 36-46.

⁸ 2013 NPRM, 28 FCC Rcd at 6717-20, paras. 47-58.

Federal portion of the Allocation Table for these bands along with an indication that the Federal allocation is limited to earth stations only.⁹ In addition, SIA proposed adding a footnote to the Allocation Table for these bands indicating that the Commission has exclusive regulatory jurisdiction over the co-primary allocations and that NTIA is responsible for assignments for Federal earth stations authorized to operate in the bands pursuant to the Commission's Part 25 rules. We invite commenters to address SIA's proposal as well as any alternative approaches that could be used to provide Federal earth stations with interference-protected access to commercial satellite services. Finally, we seek comment on whether implementing any of these proposals might inhibit future repurposing of these bands or expansion of non-Federal operations and, if so, any approaches that might avoid such inhibition.

As the *2021 FNPRM* recognized, the spectral landscape in non-Federal FSS and MSS allocations has significantly changed since the *2013 NPRM*.¹⁰ As a result, we seek to refresh the record on which FSS and MSS frequency bands that are not allocated for Federal FSS and MSS might meet the needs of Federal agencies for communications with non-Federal satellites. As the Commission first noted in 2013, providing Federal earth stations with interference protection may require that new non-Federal stations, whether satellite earth stations or terrestrial stations, be coordinated with existing Federal earth stations in the FSS and MSS frequency bands to which any new rules would apply. This coordination may require additional effort by non-Federal station applicants and could restrict the locations and operating parameters of new non-Federal stations. Does any future impact on non-Federal operations outweigh the benefits of expanding Federal users' access to these bands? The *2013 NPRM* proposed to implement agreed-upon procedures that would be followed by the Commission and NTIA to ensure parity between Federal and non-Federal earth stations that are similar to the procedures currently used by the Commission to coordinate new non-Federal earth stations.¹¹ Would the procedures discussed in the *2013 NPRM* be appropriate for coordination between Federal earth stations and non-Federal stations?

Comment Period and Filing Procedures. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments should be filed in ET Docket No. 24-121.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery

⁹ SIA Comments, ET Docket No. 13-115, 6, Attachment (filed Aug. 30, 2013). In subsequent comments responding to the *2021 FNPRM*, SIA proposed different footnote language for an Allocation Table footnote for these bands. SIA Comments, ET Docket No. 13-115, Attachment (filed Aug. 11, 2021).

¹⁰ *2021 R&O and FNPRM*, 36 FCC Rcd at 6699, para. 1.

¹¹ *2013 NPRM*, 28 FCC Rcd at 6712-14, 6718, paras. 37-39, 49.

Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

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

Initial Regulatory Flexibility Act Analysis. The 2013 NPRM and 2021 FNPRM included Initial Regulatory Flexibility Analyses (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.¹² We invite parties to file comments on the IRFAs in light of this request for supplemental comments.

Ex Parte Rules. The Commission has treated this proceeding as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹³ 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.

Further Information. Questions regarding this Public Notice may be directed to Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636 or Nicholas.Oros@fcc.gov.

-FCC-

¹² 2013 NPRM, 28 FCC Rcd 6698, Appendix B; 2021 FNPRM, 36 FCC Rcd 7764, Appendix E.

¹³ 47 CFR § 1.1200 *et seq.*

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

In the Matter of	)	
	)	
WGBH Educational Foundation	)	Facility ID No. 64833
	)	NAL/Acct. No. 202441420006
Licensee of Station WFXZ-CD	)	FRN: 0003764560
Boston, Massachusetts	)	LMS File No. 0000204578
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 26, 2024

Released: April 26, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application of WGBH Educational Foundation (Licensee or WGBH), for renewal of its license for WFXZ-CD, Boston, Massachusetts (Station).¹ In this *Notice of Apparent Liability for Forfeiture (NAL)*, we find that the Licensee apparently willfully and repeatedly violated section 73.3526(e)(11)(i) and (iii) of the Commission's rules (Rules) by failing to timely file required online public file documents, including quarterly issues/programs lists and children's television programming reports.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 three thousand dollars (\$3,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its OPIF, on a quarterly basis, an issues/programs list that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.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. Section 73.3526(e)(11)(iii) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF) a Children's Television Programming Report that details "the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children" during the preceding period.⁵ Copies must be retained until final action on the station's next license renewal

¹ Application of WGBH Educational Foundation for Renewal of License, LMS File No. 0000204578 (filed Nov. 30, 2022) (Application).

² 47 CFR §§ 73.3526(e)(11)(i), (iii).

³ 47 CFR § 73.3526(e)(11)(i).

⁴ *Id.*

⁵ 47 CFR § 73.3526(e)(11)(iii). Full power (commercial and noncommercial) and Class A television broadcasters have been required to upload various public file documents to their OPIF, including Children's Television Programming Reports, since 2012 and have been required to utilize the OPIF for the entirety of the license term.

(continued....)

application.⁶ Until third quarter 2019, Children's Television Programming Reports were required to be placed in the station's OPIF by the tenth day of the succeeding calendar quarter.⁷ Beginning with the fourth quarter of 2019, Children's Television Programming Reports were required to be filed on an annual rather than quarterly basis, within 30 days after the end of the calendar year.⁸

4. On November 30, 2022, the Licensee filed the Application. In the Application, the Licensee disclosed it uploaded one issues/programs list over four years late. The Licensee stated that its failure to timely file the list was due to the prior licensee providing only limited information about this list during the transition pursuant to a station ownership change, but that the Licensee was later able to receive more information from the prior licensee's counsel.⁹ The Licensee stated that it "uploaded a disclosure explaining the delay and providing the information that was provided to the transferee, including the full list of programs that aired on the Station during the quarter."¹⁰ The Licensee also disclosed that it filed six Children's Television Programming reports late, specifically three quarterly reports over one year late, two quarterly reports between one month and one year late, and one quarterly report that was filed one day late.¹¹ The Licensee states its failure to timely file the list was due to a "misunderstanding and belief that these filings were not required."¹²

5. On December 7, 2022, the Licensee amended the Application.¹³ In the Amended Application, the Licensee stated that it had supplemented the late filed issues/programs list with information it received from the Station's previous licensee.¹⁴ A Bureau staff inspection of the Station's OPIF revealed late filings consistent with the Licensee's disclosures made in the Application and Amended Application.

See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report, Second Report and Order, 27 FCC Rcd 4535 (2012); Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files, Public Notice, 27 FCC Rcd 7478 (2012) (announcing an effective date of August 2, 2012, for, inter alia, the requirement that television stations begin to post new Children's Television Programming Reports to their OPIF).

⁶ 47 CFR § 73.3526(e)(11)(iii).

⁷ *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5822 (2019) (Report and Order). The revised children's programming report filing rule took effect on September 16, 2019. *Media Bureau Announces Effective Date and Provides Guidance for KidVid Reporting and Compliance with Revised Safe Harbor Processing Guidelines*, MB Docket Nos. 18-202 and 17-105, Public Notice, 34 FCC Rcd 7878 (MB 2019) (KidVid Transition PN).

⁸ 47 CFR § 73.3526(e)(11)(iii); *Report and Order* at 5860, para. 63; *KidVid Transition PN*, 34 FCC Rcd at 7879; *Media Bureau Announces Effective Date of Remaining Kidvid Rules, Availability and Extension of Time to File the Revised Children's Television Programming Report in LMS, and Guidance Concerning the Filing of Final Quarterly Commercial Limits Certifications*, MB Docket Nos. 18-202 and 17-105, Public Notice, 4 FCC Rcd 12517 (MB 2019).

⁹ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit. The Station was acquired by WGBH on December 17, 2017. The consummation date was December 21, 2017. LMS File No. BAL-20171026AAI (filed Oct. 26, 2017).

¹⁰ *Id.*

¹¹ Application at Attach., WFXZ-CD Childrens Television Programming Reports.

¹² *Id.*

¹³ Application of WGBH Educational Foundation for Renewal of License Amendment, LMS File No. 0000204578 (filed Dec. 7, 2022) (Amended Application).

¹⁴ Amended Application at Attach., WFXZ-CD Renewal Amendment Exhibit Regarding Issues and Programming.

III. DISCUSSION

6. 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.¹⁵ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹⁷ and the Commission has so interpreted the term in the section 503(b) context.¹⁸ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁹

7. *Apparent Violation.* In total, the Licensee failed to upload in a timely manner to the Station’s OPIF a copy of the Station’s issue/programs lists for one quarter and copies of the Station’s children’s programming reports for six quarters. These lists were between one day and over one year late. We therefore find that the Licensee has apparently willfully and repeatedly violated sections 73.3526(e)(11)(i) and (iii) of the Rules.²⁰

8. *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.²¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²²

9. In this case, the Licensee failed to timely upload to its OPIF an issue/programs list for one quarter and six quarterly children’s programming reports, in violation of sections 73.3526(e)(11)(i) and (iii) of the Rules.²³ In its Application, the Licensee acknowledges its repeated failure to timely upload these items. The Licensee states its failure to timely file the list was due to its “misunderstanding and belief that these filings were not required.”²⁴ We note that “employee acts or omissions, such as

¹⁵ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹⁸ 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).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ See 47 CFR § 73.3526(e)(11)(i), (iii).

²¹ 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.

²² 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.

²³ See 47 CFR §§ 73.3526(e)(11)(i), (iii).

²⁴ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit (explaining, “The Station has reviewed the filing requirements for Children’s Reports with outside counsel, has reinforced those requirements with staff, and has developed procedures to ensure Children’s Reports are consistently filed by the relevant deadline.”).

clerical errors in failing to file required forms, do not excuse violations.”²⁵ It is also well settled Commission precedent that licensees are responsible for compliance with the Commission’s rules and that inadvertence or administrative oversight do not excuse failure to comply with the Commission’s rules nor are they mitigating circumstances.²⁶ Furthermore, applicants and licensees are responsible for the errors or oversights of their employees.²⁷

10. As to its late-filed issues/programs list the Licensee stated that because it did not acquire the station until December 21, 2017, it was reliant on the prior licensee of the Station to complete its fourth quarter 2017 issues/programs list and disclosed this delay in an exhibit to its renewal application.²⁸ The Station’s fourth quarter 2017 issues/programs list was uploaded over four years late in December 2022. Given the circumstances we may have found a reasonable delay to have been a *de minimis* violation, however uploading its list over four years late is not a reasonable delay. Ultimately, failure by the prior licensee to provide WGBH with the necessary information so it could file a timely and complete issues/programs list after WGBH became the Licensee is a private matter between WGBH and the prior licensee, and is not an excuse for WGBH’s failure to timely file its fourth quarter 2017 issues/programs list. Setting aside what programming may have been aired prior to WGBH becoming the licensee, it is unclear why WGBH did not, at minimum file a timely issues/programs list containing programming it aired between December 21, 2017 and December 31, 2017.

11. 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 a forfeiture in the amount of \$3,000 is appropriate for the Licensee’s apparent failure to timely upload its children’s programming reports and issues/programs list.

12. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.²⁹ 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.³⁰ 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.”³¹

13. We find that the Licensee’s apparent violation of sections 73.3526(e)(11)(i) and (iii) of the Rules does not constitute a “serious violation” warranting designation of the Application for

²⁵ *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’ns 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”).

²⁶ See e.g., *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB, rel. July 8, 2020) (paid July 24, 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *G.I.G., Inc.*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 308, 310, para. 9 & n. 29-30 (MB, rel. Jan. 19, 2023), *recon.*, Forfeiture Order, DA-23-462, para. 10 (MB, rel. May 31, 2023) (reducing but not eliminating the forfeiture amount because of licensee’s inability to pay) (paid June 22, 2023).

²⁷ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations).

²⁸ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit.

²⁹ 47 U.S.C. § 309(k).

³⁰ 47 U.S.C. § 309(k)(1).

³¹ 47 U.S.C. §§ 309(k)(2), (k)(3).

evidentiary hearing.³² Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.³³ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.³⁴

IV. ORDERING CLAUSES

14. 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 **WGBH Educational Foundation**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful and repeated violation of sections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Commission's rules, 47 CFR § 73.3526(e)(11)(i), (iii).

15. **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*, **WGBH Educational Foundation**, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),³⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, the 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:³⁶

- 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).³⁷ For

³² Review by Bureau staff of the Station's children's television programming reports has found that despite the late-filed reports, the Station complied with its children programming obligations under section 73.671 of the Rules, 47 CFR § 73.671, and as required by section 303b of the Act, 47 U.S.C. § 303b.

³³ 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).

³⁴ 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.

³⁵ Payments made using CORES do not require the submission of an FCC Form 159.

³⁶ 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.

³⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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

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

17. 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, ATTN: 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 commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁸

18. 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

³⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³⁹

19. 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 20554.⁴⁰ 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.

20. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Eric A. Brass, Corporate Counsel and Clerk, WGBH Educational Foundation, 1 Guest Street, Boston, MA 02135 and be e-mail to eric.brass@wgbh.org. A copy will also be sent to Station's counsel, Matthew S. DelNero, Legal Counsel, Covington & Burling LP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001 and by e-mail to mdelnero@cov.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁹ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

⁴⁰ See 47 CFR § 1.1914.



Federal Communications Commission
Washington, D.C. 20554

April 26, 2024

DA 24-399

In Reply Refer to:

1800B3-ARR

Released: April 26, 2024

University of Wisconsin-Milwaukee
c/o Jonathan Joseph
3114 N. Bartlett Ave.
Milwaukee, WI 53211
jonathanjoseph3456@gmail.com

Re: **University of Wisconsin-Milwaukee**
New LPFM, Milwaukee, Wisconsin
Facility ID No. 782317
Application File No. 0000231836

Petition for Reconsideration

Dear Applicant:

We have before us two Petitions for Reconsideration (Petition)¹ filed by University of Wisconsin-Milwaukee (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Milwaukee, Wisconsin.² For the reasons set forth below, we deny the Petitions.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.³ On January 25, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)⁴ of the Commission's rules (Rules) with respect to the co-channel license of station WMBI-FM, Chicago, Illinois, and with respect to the second-adjacent channel license of station WMTH(FM), Park Ridge, Illinois, and noted that an amendment was not permitted under section 73.870(c) of the Rules.⁵

¹ Pleading File No. 0000239647 (filed Feb. 22, 2024). Petitioner filed a second petition, which appears to be identical to the first. See Pleading File No. 0000239822 (filed Feb. 26, 2024). Accordingly, we refer to both pleadings collectively as the Petitions.

² Application File No. 0000231836 (filed Dec. 7, 2023).

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

⁴ See 47 CFR § 73.807(a).

⁵ See *Broadcast Actions*, Public Notice, Report No. PN-2-240125-01 (MB Jan. 25, 2024) (*Dismissal Public Notice*) (citing 47 CFR § 73.870(c)). See also Application File Nos. BLED-19970613KA and BLED-19850916KI (license applications for WMBI-FM and WMTH(FM)). The *Dismissal Public Notice* incorrectly identified the station's call sign as "WMBH-FM," but cited to the correct license application, File No. BLED-19970613KA, for station WMBI-FM.

In the Petitions, Petitioner seeks reinstatement of the Application and a waiver of section 73.870(c) in order to amend the Application to change the proposed Station coordinates to the coordinates the applicant had intended to use.⁶ Specifically, Petitioner: 1) argues that while the Application Tech Box listed inaccurate coordinates of (42 04 38.8 N, 87 53 08.3 W) (Application Coordinates), the Second Adjacent Waiver Request attached to the Application includes the correct coordinates of (43 04 38.8 N, 87 53 08.3 W) (Intended Coordinates); and 2) notes that the Commission dismissed similar LPFM applications in previous processing rounds due to section 73.807 location typographical errors, but the applicants corrected those coordinates, and the Commission reinstated the applications.⁷

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁸ Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet the co-channel and second-adjacent channel spacing requirements, as outlined in section 73.807(a).⁹ Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's Rules.¹⁰ Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.¹¹ Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."¹²

The Commission has held that when determining technical acceptability, Bureau staff relies *only* on the technical parameters specified within the Tech Box of the application.¹³ Bureau staff does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by

⁶ Petitions at 1.

⁷ *Id.* at 4-5 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, BNPL-20131114AVO, and BNPED-20100226AJU (collectively, Reinstated Applications)). See also Application at Attach. "Second Adjacent Waiver Request.pdf" (Second Adjacent Waiver Request).

⁸ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

⁹ 47 CFR § 73.807(a).

¹⁰ *Id.*

¹¹ See *id.* § 73.870(c).

¹² See *Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)); see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

¹³ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 15072, para. 8 (2014) (*Diocese of Portland*).

typographical or other applicant errors.¹⁴ Accordingly, here, the Bureau correctly dismissed the Application because the Application Coordinates specified in the “Antenna Location Data” Tech Box section of the Application failed to meet the minimum distance spacing requirements of section 73.807(a)(1) with respect to co-channel station WMBI-FM, and with respect to second-adjacent channel station WMTH(FM). As noted, the Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the co-channel and second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.¹⁵ Additionally, typographical error claims cannot be used to justify filing an otherwise prohibited amendment.¹⁶

Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission’s dismissal of their applications would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote and be unfair to the many applicants who fully complied with the rules and filing requirements. It is, therefore, contrary to the public interest.¹⁷ Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Reinstated Applications. Finally, we reject Petitioner’s reliance on the four Reinstated Applications. The Bureau reinstated those applications pursuant to its former practice to allow applicants to correct defective site coordinates where an Antenna Site Registration (ASR) number or technical exhibit contained the intended location of the transmission antenna, or in cases that did not involve the section 73.807 minimum distance spacing requirements.¹⁸ The Petitioner cannot rely on any of those exceptions in this case. The Application lacked an ASR number identifying the Intended Coordinates. Moreover, the Second Adjacent Waiver Request (Exhibit) includes both the Application Coordinates and the conflicting Intended Coordinates, and therefore, cannot be relied upon to verify correct coordinates.¹⁹ Moreover, the Reinstated Applications predate *Diocese of Portland*, where the Commission clarified that

¹⁴ See *id.* (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”); see also *Procedures Public Notice* at 8 (cautioning LPFM applicants of this practice).

¹⁵ See, e.g., *Calvary Chapel of Bremerton*, Letter Order, 28 FCC Rcd 15537, 15538-39 (MB 2013) (dismissing LPFM applications that fail to meet minimum co-channel spacing requirements, and noting that the Commission does not have authority to waive co-channel spacing requirements); *Christian Charities*, 30 FCC Rcd at 10549, para. 5 (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014) (*People of Progress*); *Clifford Brown*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014)).

¹⁶ *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting argument to correct typographical error where corrective amendment was prohibited) (*NCE MX Group 82*).

¹⁷ See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) (“In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.”).

¹⁸ See *People of Progress*, 29 FCC Rcd at 15066, para. 4 and n.12.

¹⁹ Applicant’s use of conflicting coordinates within the Exhibit render it unreliable. Although Applicant included the Intended Coordinates (43 04 38.8 N, 87 53 08.3 W) on page two of the Exhibit, Applicant listed the Application Coordinates (42 04 38.8 N, 87 53 08.3 W) on page one of the Exhibit.

it would, going forward, rely solely on Tech Box data to determine technical acceptability and prohibit applicants from curing a location deficiency in an application with a prohibited amendment.²⁰ Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.²¹

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petitions for Reconsideration filed by University of Wisconsin-Milwaukee, on February 22, 2024, and February 26, 2024 (Pleading File Nos. 0000239647 and 0000239822) **ARE DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁰ See *Christian Charities*, 30 FCC Rcd at 10552, n.26 (citing *People of Progress* and *Diocese of Portland*).

²¹ See, e.g., *Renew Taylorsville*, Letter, DA 24-289 (MB 2024) (dismissing application based on Tech Box data and rejecting prohibited amendment to correct typographical errors); *NCE MX Group 82*, *supra* note 17 (same).

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

In the Matter of	)	
	)	
Cumulus Licensing LLC (Assignor)	)	
and	)	
Cumulus Licensing Holding Company II LLC	)	
(Assignee)	)	
	)	
For Consent to Pro Forma Assignment of Licenses	)	Application File No. 0000240099 et al.
	)	
Radio License Holding CBC, LLC (Assignor)	)	
and	)	
Cumulus Licensing Holding Company II LLC	)	
	)	
For Consent to Pro Forma Assignment of Licenses	)	Application File No. 0000240103 et al.
	)	
Radio License Holdings LLC (Assignor)	)	
and	)	
Cumulus Licensing Holding Company II LLC	)	
(Assignee)	)	
	)	
For Consent to Pro Forma Assignment of Licenses	)	Application File No. 000024142 et al.
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2024

Released: April 26, 2024

By the Chief, Audio Division, Media Bureau:

1. The Media Bureau (Bureau) has under consideration the above-captioned uncontested applications (Applications) for pro forma assignment of broadcast station licenses from three wholly owned subsidiaries of Cumulus Media, Inc. (Cumulus), to a new wholly owned subsidiary, Cumulus Licensing Holding Company II LLC.¹ In addition, Cumulus recently filed a remedial petition for declaratory ruling (2024 PDR) to seek specific approval for certain named foreign investors to hold more than 5% of the equity and/or voting interests in Cumulus and advance approval for those foreign investors to increase their equity and/or voting interests in Cumulus up to any non-controlling amount not to exceed 14.99%.² Based upon our review of the specific facts and circumstances of this case, and for the reasons discussed below, we find that grant of the Applications, with the conditions set forth below, is in the public interest. We plan to release a public notice seeking comment on the 2024 PDR.

¹ The Applications were filed on February 29, 2024, and accepted for filing on March 5, 2024. *See Applications*, Public Notice, Report No. PN-1-240305-01 (Mar. 5, 2024).

² Petition for Declaratory Ruling of Cumulus (filed Feb. 23, 2024) (2024 PDR); Supplement to Petition for Declaratory Ruling of Cumulus (filed Mar. 21, 2024) (2024 PDR Supplement). A public notice seeking comment on the 2024 PDR is forthcoming.

I. BACKGROUND

2. *Foreign Ownership.* On May 29, 2020, the Bureau released the *2020 Declaratory Ruling* granting Cumulus's previous petition for declaratory ruling and permitting the aggregate direct and/or indirect foreign equity and voting interests in Cumulus to exceed the 25% statutory benchmark and to increase up to and including 100%.³ The ruling was subject to conditions that require Cumulus to comply with the standard terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement that Cumulus obtain specific approval for any foreign investor that holds, or would hold, directly and/or indirectly, more than 5% (or more than 10% for certain institutional investors) of the equity and/or voting interests, or a controlling interest, in the company.⁴ Among other things, the terms and conditions also require that Cumulus file a statement with the Commission explaining the circumstances within 30 days of knowing or having reason to know that the company is no longer in compliance with the *2020 Declaratory Ruling*, section 310(b) of the Act, or the Commission's foreign ownership rules.⁵

3. On February 2, 2024, Cumulus notified the Audio Division (Division) that the company learned of an investment that rendered Cumulus non-compliant with the terms of the *2020 Declaratory Ruling*.⁶ Specifically, on January 24, 2024, Renew Group Private Ltd. (Renew), a Singaporean entity, filed a Schedule 13D with the U.S. Securities and Exchange Commission (SEC) to report its ownership of approximately 9.8% of the equity and 10.01% of the voting interests in Cumulus through Renew's ownership of 1,621,426 shares of Cumulus's Class A Common Stock.⁷ Pursuant to section 1.5004(f)(3) of the Commission's rules,⁸ Cumulus informed the Division that Cumulus intended to file a remedial PDR within 30 days of the date the company learned of the non-complaint foreign interests.⁹

4. On February 23, 2024, Cumulus timely filed the 2024 PDR seeking specific approval for the non-compliant foreign equity and voting interests acquired by Renew and its beneficial owners and equity interest holders.¹⁰ Pursuant to section 1.5004(f)(3) of the Commission's rules,¹¹ Cumulus certified that Renew's acquisition of interests exceeding the 5% threshold requiring specific approval under the

³ *Cumulus Media, Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 19-143, Declaratory Ruling, 35 FCC Rcd 5461, 2020 WL 2830372, at *3, paras. 8-11 (MB 2020) (*2020 Declaratory Ruling*).

⁴ 47 CFR § 1.5004(a)(1); *2020 Declaratory Ruling*, 2020 WL 2830372, at *3, para. 11.

⁵ 47 CFR § 1.5004(f); *2020 Declaratory Ruling*, 2020 WL 2830372, at *3, para. 11.

⁶ Letter from David D. Burns, Counsel to Cumulus, to Holly Saurer, Chief, FCC Media Bureau (Feb. 2, 2024) (February Letter).

⁷ February Letter at 1-2; Applications Attach., Comprehensive Exhibit to Form 316 (Feb. 29, 2024) (Comprehensive Exhibit).

⁸ 47 CFR § 1.5004(f)(3)(i) ("The licensee shall notify the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership and specify in the letter that it will file a petition for declaratory ruling under § 1.5000(a)(1) or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s).").

⁹ February Letter at 2.

¹⁰ See *supra* note 2.

¹¹ 47 CFR § 1.5004(f)(3)(ii) ("The licensee shall demonstrate in its petition for declaratory ruling (or in a letter notifying the relevant Bureau that the non-compliance has been timely remedied) that the licensee's non-compliance with the terms of the licensee's existing foreign ownership ruling or the foreign ownership rules was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.").

Commission's rules was an independent investment decision that occurred on the NASDAQ Stock Exchange and was wholly beyond Cumulus's control, was not reasonably foreseeable to Cumulus, and was not known to Cumulus before Renew reported the acquisition to the SEC on the Schedule 13D filing.¹²

II. DISCUSSION

5. We find that the public interest will be served by grant of the Applications with conditions that, as discussed below, are designed to insulate, to the extent possible, the non-compliant foreign interests pending action on the 2024 PDR seeking specific approval of those interests. We also find that the record raises no substantial and material question of fact as to whether Cumulus is qualified to be a licensee of broadcast stations and whether grant of the Applications is in the public interest.

6. We also find that grant of the Applications is consistent with section 310(b)(4) of the Act.¹³ Section 310(b)(4) of the Communications Act of 1934, as amended (Act), states that “[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”¹⁴ This section of the Act also grants the Commission discretion to allow higher levels of foreign investment in a licensee's controlling U.S.-organized parent unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.¹⁵ As discussed above, the *2020 Declaratory Ruling* found that it is in the public interest to permit the aggregate direct and/or indirect foreign equity and voting interests in Cumulus to exceed the 25% statutory benchmark and to increase up to and including 100%, subject to terms and conditions of the ruling.¹⁶ While the Renew investment renders Cumulus non-compliant with the *2020 Declaratory Ruling*,¹⁷ section 1.5004(f)(3) of the rules permits Cumulus to file, and the Commission to grant, a remedial PDR without the Commission taking enforcement action for the non-compliance, subject to the requirements specified in section 1.5004(f)(3)(i) and (ii), and except as otherwise provided in section 1.5004(f)(3)(iii).¹⁸

7. The Bureau's practice has been to delay action on pending assignment applications while the proposed assignee is out of compliance with the Commission's foreign ownership rules. However, as discussed above, section 1.5004(f)(3) provides for the filing and grant of remedial PDRs. Section 1.5004(f)(3) does not address how such remedial PDRs should be handled in the context of pending

¹² 2024 PDR at 3-4; 2024 PDR Supplement; February Letter at 1-2.

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

¹⁴ 47 U.S.C. § 310(b)(4).

¹⁵ *Id.*

¹⁶ *See supra* para. 2.

¹⁷ *See 2020 Declaratory Ruling*, 2020 WL 2830372, at *3, para. 11 (“[T]he ruling is subject to the requirement that Cumulus obtain specific approval for any new or additional foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than five percent (or more than 10 percent for certain institutional investors) of the equity and/or voting interests, or a controlling interest, in the company.” (citing 47 CFR §§ 1.5001(i), 1.5004(a)(1))).

¹⁸ 47 CFR § 1.5004(f)(3).

assignment applications,¹⁹ and we find that neither the Act nor the rules prevents us from granting the Applications if we are able to make the requisite public interest findings.²⁰ Because Cumulus has previously been found qualified to be the licensee of over 400 full-service radio stations,²¹ did not solicit the non-compliant foreign investment and was not even aware of it until Renew's SEC filing,²² and complied with the Commission's rules for notifying the Commission upon learning about the unsolicited investment,²³ we conclude that the public interest will be served by grant of the Applications with the following conditions, which are designed to insulate, to the extent possible, the new foreign interests while the remedial PDR seeking specific approval of such interests is pending:²⁴

- Cumulus must suspend all voting rights associated with any stock held in Cumulus that would permit the voting, directly and/or indirectly, of more than 5% of Cumulus's outstanding voting stock by Renew Group Private Limited; IR Investments, LP; the IR Charitable Trust; and Indu Rawat, or any of their affiliates or third parties to whom they may assign or transfer any of their rights or interests (collectively, the Renew Investors), until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus. This restriction shall apply to the aggregate of all interests in Cumulus that the Renew Investors hold collectively.
- No Renew Investor shall have the right to do any of the following, and Cumulus shall not allow any Renew Investor to do any of the following, until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus:
 - Designate, appoint, nominate, or serve as a member of the board of directors of Cumulus;
 - Attend any meeting of the board of directors of Cumulus;
 - Receive any non-public materials from Cumulus, including any non-public materials distributed to the board of directors of Cumulus;
 - Have any role in or communicate with Cumulus concerning the day-to-day management or operations of Cumulus's radio stations; or
 - Have any role in or veto right with respect to a decision to buy or sell a radio station.
- No employee, agent, or affiliate of the Renew Investors shall be an officer, director, employee, or consultant of Cumulus (including subsidiaries and affiliates of Cumulus) until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus. Cumulus shall not permit any employee, agent, or affiliate of the Renew Investors to

¹⁹ *Id.*

²⁰ See 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000 *et seq.* We note that the 2020 *Declaratory Ruling* authorizes up to and including 100% aggregate direct and/or indirect foreign investment (equity and voting interests) in Cumulus, subject to the terms and conditions specified in the ruling. See 2020 *Declaratory Ruling*, 2020 WL 2830372, at *3, paras. 8-11.

²¹ See 2024 PDR at 2 & Exh. A, Subsidiaries and Licenses.

²² *Id.* at 4.

²³ See *supra* paras. 2-4.

²⁴ See *Applications of Mortenson Broadcasting Co. of Texas, Inc., et al.*, Application File No. 0000129304 *et al.*, Memorandum Opinion and Order, 35 FCC Rcd 5935, 5939-42 paras. 9-12 (MB 2021) (granting applications for assignment of licenses to iHM Licenses, LLC, with conditions designed to insulate, to the extent possible, new foreign interests in iHeart Media, Inc., while remedial PDR seeking specific approval of such interests was pending).

be an officer, director, employee, or consultant of Cumulus (including subsidiaries and affiliates of Cumulus) until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.

- Cumulus must ensure that any and all dividends and/or distributions payable to the Renew Investors are placed in escrow and that no such dividend or distribution is made to the Renew Investors until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.
- Within seven days of the date of grant of the assignment application, Cumulus shall submit a declaration to the Chief, Audio Division, Media Bureau, confirming that Cumulus is in compliance with each of the preceding conditions and that Cumulus will exercise its rights under its organizational documents to remain in compliance with each of the preceding conditions until and unless the Commission releases a declaratory ruling granting specific approval for each of the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.
- Pursuant to Section 1.5004(f)(3)(iii) of the Commission's rules, if the 2024 PDR²⁵ is not granted in full, Cumulus must come into compliance no later than 30 days following the Commission's decision, unless the Commission determines under such rule that immediate remedial action is required.²⁶

8. We emphasize that the conditions set forth above, which relate only to the specific facts of this case, do not convert the non-compliant foreign interests held by Renew, its beneficial owners, and equity interest holders, into something other than "capital stock [] owned of record" and that the Renew interests remain subject to section 310(b)(4) of the Act.²⁷ While the conditions are designed to limit the ability of the non-compliant foreign investors to control or influence Cumulus, we note that the foreign ownership restrictions in section 310(b)(4) extend beyond interests that confer control or influence.²⁸

9. Our decision to grant the Applications with conditions is based on our findings under sections 310(b)(4) and 310(d) of the Act that the public interest will be served by grant of the Applications (subject to the conditions enumerated herein), despite the non-compliant foreign investment, based on the specific facts of this case. We note that Cumulus is the publicly traded controlling U.S. parent of broadcast licensees and that the company's existing declaratory ruling authorizes up to and including 100% aggregate direct and/or indirect foreign investment (equity and voting interests) in Cumulus.²⁹ We also note that Renew is a Singaporean entity owned by Bahamian entities, a United States citizen, and a Canadian citizen whose direct and indirect interests in Renew amount to more than 99% of Renew's equity and voting interests. According to Cumulus, Renew's acquisition of Cumulus's class A common stock on the NASDAQ Stock Exchange was an independent investment decision by Renew and

²⁵ See 2024 PDR *supra* note 2.

²⁶ 47 CFR § 1.5004(f)(3)(iii).

²⁷ 47 U.S.C. § 310(b)(4).

²⁸ *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Memorandum Opinion and Order, 1 FCC Rcd 12, 13, para. 7 (1986) ("The adoption of the equity benchmarks in Section 310(b) reflects congressional concern over substantial alien ownership . . . even where the alien's ownership interest is noninfluential in nature.").

²⁹ *2020 Declaratory Ruling*, 2020 WL 2830372, at *3, paras. 8-11. The ruling is subject to conditions that require Cumulus to comply with the standard terms and conditions set forth in section 1.5004 of the Commission's rules. *Id.* at *3, para. 11.

was wholly outside of Cumulus's control and not reasonably foreseeable or known to Cumulus before or at the time the investment occurred.³⁰ In addition, we note that the Applications are for pro forma assignments to effect a planned corporate reorganization and restructuring of Cumulus's debt, and as such they do not involve a substantial change in ownership or control.³¹ And, as discussed above, pending action on the 2024 PDR, we require that Cumulus comply with the conditions specified herein, which are designed to limit the ability of Renew, including its beneficial owners and equity interest holders, to control or influence Cumulus.

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 309, 310(b)(4) and 310(d) of the Act, 47 U.S.C. §§ 154(i), 154(j), 309, 310(b)(4), (d), and sections 0.61(a) and 0.283 of the Commission's rules, 47 CFR §§ 0.61(a) and 0.283, the applications for pro forma assignment of licenses from Cumulus Licensing LLC, Radio License Holding CBC, LLC, and Radio License Holdings LLC, to Cumulus Licensing Holding Company II LLC, listed in the Appendix, or as otherwise listed previously in the Commission's public notices, ARE GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:

- Cumulus must suspend all voting rights associated with any stock held in Cumulus that would permit the voting, directly and/or indirectly, of more than 5% of Cumulus's outstanding voting stock by Renew Group Private Limited; IR Investments, LP; the IR Charitable Trust; and Indu Rawat, or any of their affiliates or third parties to whom they may assign or transfer any of their rights or interests (collectively, the Renew Investors), until and unless the Commission releases a declaratory ruling granting specific approval for the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus. This restriction shall apply to the aggregate of all interests in Cumulus that the Renew Investors hold collectively.
- No Renew Investor shall have the right to do any of the following, and Cumulus shall not allow any Renew Investor to do any of the following, until and unless the Commission releases a declaratory ruling granting specific approval for the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus:
 - Designate, appoint, nominate, or serve as a member of the board of directors of Cumulus;
 - Attend any meeting of the board of directors of Cumulus;
 - Receive any non-public materials from Cumulus, including any non-public materials distributed to the board of directors of Cumulus;
 - Have any role in or communicate with Cumulus concerning the day-to-day management or operations of Cumulus's radio stations; or
 - Have any role in or veto right with respect to a decision to buy or sell a radio station.
- No employee, agent, or affiliate of the Renew Investors shall be an officer, director, employee, or consultant of Cumulus (including subsidiaries and affiliates of Cumulus) until and unless the Commission releases a declaratory ruling granting specific approval for the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus. Cumulus shall not permit any employee, agent, or affiliate of the Renew Investors to be an

³⁰ 2024 PDR at 3-4.

³¹ Comprehensive Exhibit at 1-2 & Exhs. B (Pre-Transaction Structure), C (Post-Transaction Structure), and D (Form of Instruments of Assignment/Transfer); Press Release, Cumulus, Cumulus Media Announces Exchange Offer and Consent Solicitation Relating to 6.750% Senior Secured First-Lien Notes due 2026 (Feb. 27, 2024), <https://www.cumulusmedia.com/2024/02/27/cumulus-media-announces-exchange-offer-and-consent-solicitation-relating-to-6-750-senior-secured-first-lien-notes-due-2026/>.

officer, director, employee, or consultant of Cumulus (including subsidiaries and affiliates of Cumulus) until and unless the Commission releases a declaratory ruling granting specific approval for the Cumulus Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.

- Cumulus must ensure that any and all dividends and/or distributions payable to the Renew Investors are placed in escrow and that no such dividend or distribution is made to the Renew Investors until and unless the Commission releases a declaratory ruling granting specific approval for the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.
- Within seven days of the date of grant of the assignment application, Cumulus shall submit a declaration to the Chief, Audio Division, Media Bureau, confirming that Cumulus is in compliance with each of the preceding conditions and that Cumulus will exercise its rights under its organizational documents to remain in compliance with each of the preceding conditions until and unless the Commission releases a declaratory ruling granting specific approval for the Renew Investors to hold, directly and/or indirectly, more than 5% of the equity and/or voting interests in Cumulus.
- Pursuant to section 1.5004(f)(3)(iii) of the Commission's rules, if the petition is denied, Cumulus must come into compliance no later than 30 days following the Commission's decision, unless the Commission determines under such rule that immediate remedial action is required.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

APPENDIX A

CUMULUS MEDIA, INC., STATIONS SUBJECT TO PRO FORMA ASSIGNMENTS

I. CUMULUS LICENSING LLC TO CUMULUS LICENSING HOLDING COMPANY II LLC

Call Sign	Service	City	State	Facility ID	File Number
WHGB	AM	HARRISBURG	PA	32944	0000240099
WNNK-FM	FM	HARRISBURG	PA	32945	0000240100
W237DE	FX	HARRISBURG	PA	158598	0000240101
WTPA-FM	FM	MECHANICSBURG	PA	54021	0000240102

II. RADIO LICENSE HOLDING CBC, LLC, STATIONS

Call Sign	Service	City	State	Facility ID	File Number
WCTO	FM	EASTON	PA	36997	0000240103
KOBQ	FM	ALBUQUERQUE	NM	11250	0000240104
KATT-FM	FM	OKLAHOMA CITY	OK	8797	0000240105
WLEV	FM	ALLENTOWN	PA	39875	0000240106
KWPN	AM	MOORE	OK	22190	0000240107
KMGA	FM	ALBUQUERQUE	NM	11231	0000240108
WPRV	AM	PROVIDENCE	RI	64840	0000240109
WODE-FM	FM	EASTON	PA	8595	0000240110
KDJK	FM	MARIPOSA	CA	11241	0000240111
K233CG	FX	SANDIA	NM	88468	0000240112
KKWD	FM	BETHANY	OK	6509	0000240113
KRST	FM	ALBUQUERQUE	NM	12584	0000240114
WOKI	FM	OLIVER SPRINGS	TN	10457	0000240115
WPRO-FM	FM	PROVIDENCE	RI	64841	0000240116
WNML-FM	FM	FRIENDSVILLE	TN	7998	0000240117
KNML	AM	ALBUQUERQUE	NM	68608	0000240118
WEEX	AM	EASTON	PA	8596	0000240119
KDRF	FM	ALBUQUERQUE	NM	55052	0000240120
KHKK	FM	MODESTO	CA	11240	0000240121
WWKX	FM	WOONSOCKET	RI	65198	0000240122
KKOB	AM	ALBUQUERQUE	NM	11251	0000240123
WWLS-FM	FM	THE VILLAGE	OK	37435	0000240124
KTBL	AM	LOS RANCHOS	NM	48604	0000240125
WKY	AM	OKLAHOMA CITY	OK	23418	0000240126
W234AX	FX	ALLENTOWN	PA	157407	0000240127
KWNN	FM	TURLOCK	CA	60427	0000240128
WWLI	FM	PROVIDENCE	RI	64838	0000240129
WIVK-FM	FM	KNOXVILLE	TN	16890	0000240130
KKOB-FM	FM	ALBUQUERQUE	NM	48596	0000240131
KHOP	FM	OAKDALE	CA	52528	0000240132

WPRO	AM	PROVIDENCE	RI	64843	0000240133
WWKL	FM	HERSHEY	PA	64842	0000240134
WWYY	FM	BELVIDERE	NJ	54689	0000240135
WEAN-FM	FM	WAKEFIELD- PEACEDALE	RI	4376	0000240136
KATM	FM	MODESTO	CA	11239	0000240137
KESP	AM	MODESTO	CA	11233	0000240138
WQXA-FM	FM	YORK	PA	52169	0000240139
KYIS	FM	OKLAHOMA CITY	OK	8798	0000240140
WNML	AM	KNOXVILLE	TN	16894	0000240141

III. RADIO LICENSE HOLDINGS LLC

Call Sign	Service	City	State	Facility ID	File Number
KQRS-FM	FM	GOLDEN VALLEY	MN	35505	0000240142
WGVX	FM	LAKEVILLE	MN	61379	0000240143
KXXR	FM	MINNEAPOLIS	MN	35506	0000240144
WWWM-FM	FM	EDEN PRARIE	MN	61541	0000240145
WLUP	FM	CAMBRIDGE	MN	54838	0000240146



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Washington, D.C. 20554

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DA 24-401
Released: April 26, 2024

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER CONTROL OF
COMMUNICATIONS 1 NETWORK, INC. TO WEBSTER-CALHOUN COOPERATIVE
TELEPHONE ASSOCIATION AND WINNEBAGO COOPERATIVE TELECOM
ASSOCIATION.**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-48

Comments Due: May 10, 2024
Reply Comment Due: May 17, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Communications 1 Network, Inc. (Comm 1 or Transferor), Webster-Calhoun Cooperative Telephone Association (WebCal), and Winnebago Cooperative Telecom Association (WCTA) (WebCal, together with WCTA, Transferees) (Transferor and Transferees 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 control of Comm 1 to Transferees.²

Comm 1, an Iowa corporation and rural incumbent local exchange carrier (LEC), provides fiber Internet, phone, and digital cable TV services as well as streaming support to the Iowa communities of Belmond, Britt, Clarion, Corwith, Dakota City, Eagle Grove, Garner, Goldfield, Humboldt, Kanawha, Klemme, and Renwick.³ Comm 1 wholly owns Comm 1 Connects, Inc., a competitive LEC and provider of broadband, video, and voice services.⁴ Comm 1 also wholly owns Goldfield Holdings,

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

² Application for the Transfer of Control of Communications 1 Network, Inc. to Webster-Calhoun Cooperative Telephone Association and Winnebago Cooperative Telecom Association, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-48 (filed Mar. 8, 2024) (Application). Applicants filed a supplements to the Application on April 2, 2024 and April 17, 2024. Supplement to Application for the Transfer of Control of Communications 1 Network, Inc. to Webster-Calhoun Cooperative Telephone Association and Winnebago Cooperative Telecom Association, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-48 (filed Apr. 2, 2024) (Apr. 2 Supplement); Supplement to Application for the Transfer of Control of Communications 1 Network, Inc. to Webster-Calhoun Cooperative Telephone Association and Winnebago Cooperative Telecom Association, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-48 (filed Apr. 17, 2024) (Apr. 17 Supplement). Applicants also filed an application for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Application at 3, 11.

LLC (Goldfield Holdings), a holding company that wholly owns, and in turn, that Comm 1 indirectly wholly owns: Goldfield Telephone Co Inc. (Goldfield Telco), an incumbent LEC providing broadband, video, and voice services in Iowa; Goldfield Access Network, L.C., a competitive LEC associated with Goldfield Telco providing broadband, video, and voice services; and Goldfield Communications Services, LLC, a seller and installer of PBX phone systems.⁵ Comm 1 and Goldfield Telco are eligible telecommunications carriers (ETCs) and receive model-based high-cost universal service support from the Enhanced Alternative Connect America Cost Model (A-CAM) support mechanism.⁶ The 10% or greater owners of Comm 1 are three investment trusts whose beneficiaries are U.S. citizens: the William R. Johnson 2012 Exempt Trust (34.34%); the Mary L. Johnson 2009 Marital Trust (26.10%); and the Mary L. Johnson 2013 Exempt Trust (13.32%).⁷

WebCal is an incumbent LEC member-supported telephone cooperative in north central Iowa.⁸ WebCal services twenty communities with a fiber-driven network just outside the Fort Dodge, Iowa area.⁹ WebCal wholly owns Webster-Calhoun Communications L.C. (WebCal Comm), a holding company for WebCal's investments, and Webster-Calhoun Long Distance, that currently has no operations and offers no services.¹⁰ WebCal also has a 12.33% ownership interest in Alpine Communications, L.C. (Alpine) and its subsidiaries.¹¹ Alpine, an incumbent LEC providing local exchange service and exchange access service, wireless telecommunications, Internet access, video, and monitored security services in the Clayton and Fayette counties in Iowa.¹² Alpine's wholly-owned subsidiary, Alpine Acquisition Group (AAG), is an Iowa limited liability company that does not offer domestic telecommunications services.¹³ AAG is a holding company for and owns all outstanding shares of stock in La Porte City Telephone Company (LPC Telco) and its subsidiaries.¹⁴ LPC Telco is an incumbent LEC that provides local exchange service and exchange access service, as well as Internet access and digital TV services in the Benton, Black Hawk, Buchanan, and Tama counties of Iowa.¹⁵ LPC Telco has two subsidiaries, LPC Long Distance, Inc., which holds an international 214 authorization and operates CATV/multichannel video systems, and LPC Communications, Inc., which

⁴ *Id.* at 7.

⁵ *Id.*; Apr. 2 Supplement at 5; Apr. 17 Supplement at 7.

⁶ Application at 13; Apr. 2 Supplement at 5-7; *see also 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, DA 23-1025 (WCB rel. Oct. 30, 2023). Comm 1, Goldfield Telco, and Goldfield Access Network, L.C. also participate in the Lifeline program. *Id.* at 15; Apr. 17 Supplement at 7-8.

⁷ Application at 6. The beneficiaries of these trusts are William R. Johnson and Mary L. Johnson's three children: Susan Weigenant; Melanie Steinkamp; and Sally Manzano. *Id.*

⁸ *Id.* at 10. The cooperative has approximately 3,300 members from sixteen communities in rural north-central Iowa. *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5; Apr. 17 Supplement at 1-2.

¹¹ Application at 5; Apr. 17 Supplement at 2-3 (noting WebCal's interest in Alpine will shift to 12.72% upon the closing of a transaction between Alpine and La Porte City Telephone Company on April 20, 2024).

¹² Application at 5; Apr. 17 Supplement at 2-3.

¹³ Apr. 17 Supplement at 4.

¹⁴ *Id.*

¹⁵ *Id.*

offers no services.¹⁶ Alpine's other wholly-owned subsidiary, Alpine Long Distance, LC, provides long distance and broadband services.¹⁷

WebCal also has a 10% or greater direct or indirect ownership interest in the following companies: Platinum Connect L.L.C., a competitive LEC that provides voice, Internet, and television in Hamilton County, Iowa (50%);¹⁸ and Iowa RSA 9 Limited Partnership, an Iowa limited partnership that provides mobile wireless voice and data services in portions of Calhoun, Carroll, Greene, Ida, and Sac counties in west-central Iowa (24.99%).¹⁹ WebCal, an ETC, receives model-based high-cost universal service support from the A-CAM II support mechanism.²⁰ Alpine and LPC Telco, both ETCs, receive cost-based high-cost universal service support through the Connect America Fund (CAF) Broadband Loop Support and High-Cost Loop Support mechanisms.²¹ There are no individuals or entities that have a 10% or greater interest in WebCal,²² and all of WebCal's affiliates are owned by U.S. citizens.²³

WCTA is an incumbent LEC and competitive LEC, depending on the study area code (SAC),²⁴ member-supported telephone cooperative in north central Iowa and southern Minnesota.²⁵ WCTA is a broadband Internet and communications provider with buried fiber optic service lines to 100% of its subscribers.²⁶ WCTA's wholly-owned subsidiary, WCTA Wireless, Inc. (WCTA Wireless), is a holding company for WCTA's investments.²⁷ WCTA also has a 33% ownership interest in Tri-Central Transport, LLC, a small fiber transport company in north-central Iowa and south-central Minnesota.²⁸ WCTA, an ETC, receives model-based high-cost universal service support from the A-CAM II and Rural Digital Opportunity Fund support mechanisms and cost-based support from the CAF Phase II Auction support mechanism.²⁹ There are no individuals or entities that have a 10% or greater interest in

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Application at 5; Apr. 17 Supplement at 5.

¹⁹ Application at 5; Apr. 17 Supplement at 5.

²⁰ Application at 13; Apr. 17 Supplement at 8. WebCal also participates in the Lifeline program. Application at 15; Apr. 17 Supplement at 8.

²¹ Apr. 17 Supplement at 8.

²² Application at 5.

²³ Apr. 17 Supplement at 3-5.

²⁴ Applicants detail the SACs that are incumbent LECs and competitive LECs. *Id.* at 6.

²⁵ Application at 10; Apr. 17 Supplement at 6. WCTA services the following exchanges: Albert, Lea, Alden, Bancroft, Britt, Buffalo Center 561, Buffalo Center 562, Conger, Crystal Lake, Emmons (IA), Emmons (MN), Fertile, Forest City, Garner, Glenville, Grafton, Hanlontown, Joice, Kensett, Kiester, Lake Mills, Lakota, Ledyard, Lyle, Manly, Mason City, Miller, Mona, Northwood, Rake (IA), Rake (MN), Scarville, Thompson, Twin Lakes, and Woden. Application at 10.

²⁶ *Id.* The cooperative provides fiber internet connection to an estimated 13,066 homes. *Id.*

²⁷ *Id.* at 5; Apr. 17 Supplement at 6-7.

²⁸ Application at 5.

²⁹ April. 17 Supplement at 6, 8 (identifying the SACs and divisions of the company that receive each type of high-cost support). WCTA also participates in the Lifeline program. *Id.*

WCTA.³⁰ Neither Transferees nor any of its affiliates or subsidiaries owns or controls 10% or greater direct or indirect interest in any other domestic telecommunications provider.³¹

Pursuant to the terms of the purchase agreement, Transferees will acquire control of Comm 1 through a stock transaction.³² Applicants state that following the proposed transaction, WebCal Comm and WCTA Wireless will each have a 50% ownership interest in Comm 1.³³ Applicants also state that through this proposed transaction, Transferees will acquire fiber-based broadband and telecommunications retail assets, property, rights, and interest (including all customer contracts and customer relationships) used to provide Internet, telephone, video, and other communications services in north-central Iowa.³⁴ Applicants assert that the ultimate result of the proposed transaction will be that Transferees will broaden its customer base so that it may provide Comm 1 subscribers with innovative telecommunications services and high-speed Internet access similarly offered to Transferees members.³⁵ Moreover, Applicants assert that Transferees and Comm 1 will continue to hold domestic section 214 authority in their respective service areas.³⁶ Applicants explain that Transferees will continue to exist and operate under their existing corporate structure and continue to provide services to their members without interruption or change to any existing services.³⁷ Finally, Applicants state there is no overlap in the service or fiber territories of any of the Applicants.³⁸

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity.³⁹ Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.⁴⁰

Domestic Section 214 Application Filed for the Transfer of Ownership of
Communications 1 Network, Inc. to Webster-Calhoun Cooperative Telephone Association and
Winnebago Cooperative Telecom Association
WC Docket No. 24-48 (filed Mar. 8, 2024).

³⁰ Application at 5.

³¹ *Id.* at 5-6.

³² *Id.* at 9.

³³ *Id.* at 2, 9.

³⁴ *Id.*

³⁵ *Id.* at 10.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 2, 12, 16.

³⁹ *Id.* at 11.

⁴⁰ See 47 CFR § 63.03(c)(1)(v).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before May 10, 2024**, and reply comments **on or before May 17, 2024**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁴¹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Megan (Capasso) Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov;
- 3) David Krech, Office of Internal Affairs, david.krech@fcc.gov; and
- 4) 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

⁴¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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.⁴² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Megan Danner at (202) 418-1151.

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⁴² See 47 CFR § 1.45(c).



PUBLIC NOTICE

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

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

DA 24-402
April 26, 2024

WORLD RADIOCOMMUNICATION CONFERENCE ADVISORY COMMITTEE SCHEDULES FIRST MEETING FOR JUNE 3, 2024

IB Docket No. 24-30

The first meeting of the World Radiocommunication Conference Advisory Committee (Advisory Committee) will be held on June 3, 2024, at 10:30 a.m. in person in the Commission Meeting Room of the FCC, 45 L Street, N.E., Washington, D.C. and via livestream at <http://www.fcc.gov/live>. A draft agenda of the meeting is attached.

This first meeting will focus on WAC processes, including the final charter, committee structure, including the appointed chairs and vice-chairs, and working methods. This meeting is open to the public.

The Commission's WRC-27 website (www.fcc.gov/wrc-27) contains the latest updated information and agendas on all scheduled meetings and Advisory Committee matters. Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: WRC-27@fcc.gov.

For additional information please contact Gregory Baker, the Designated Federal Official for the Advisory Committee, Gregory.Baker@fcc.gov, telephone (202) 919-0758.

AGENDA

**First Meeting of the 2027 World Radiocommunication Conference Advisory Committee
Federal Communications Commission
June 3, 2024; 10:30 a.m.**

1. Opening Remarks
2. Approval of Agenda
3. Chartering of the Committee / Structure and Chairs / Working Method Guidance / IWG Processes
4. FCC Presentation on Federal Advisory Committee Rules
5. Future Meetings
6. Other Business

- FCC -



Federal Communications Commission
Washington, D.C. 20554

April 26, 2024

DA 24-403

WC Docket No. 02-60

Mark Sweeney
Vice President
Rural Health Care Division
Universal Service Administrative Company
700 12th St. NW #900
Washington, DC 20005

Dear Mr. Sweeney:

The purpose of this letter is to notify the Universal Service Administrative Company that the Wireline Competition Bureau approves the Rural Health Care Program Funding Year 2024 Funding Request Review Procedures, subject to further modifications and/or instruction from the Commission.

Thank you for your attention to this matter.

Sincerely,

/s/ Bryan P. Boyle
Bryan P. Boyle
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Cc: Trent Harkrader, Chief, Wireline Competition Bureau
Allison Baker, Associate Bureau Chief, Wireline Competition Bureau
Jodie Griffin, Chief, Telecommunications Access Policy Division
Mark Stephens, Managing Director



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 24-404
Released: April 29, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 24-31

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

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of CCI Systems, Inc., by Spectrum Mid-America, LLC, Charter Fiberlink CCO, LLC, Charter Fiberlink-Michigan, LLC, Time Warner Cable Information Services (Michigan), LLC, Time Warner Information Services (Wisconsin), LLC, Time Warner Cable Business LLC, and Spectrum Advanced Services, LLC,
WC Docket No. 24-31, Public Notice, DA 24-305 (WCB 2024).

Effective Grant Date: April 27, 2024

For further information, please contact Tracey Wilson at (202) 418-1394 or Greg Kwan at (202) 418-1191, Competition Policy Division, Wireline Competition Bureau.

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

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



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

May 6, 2024

DA 24-405

SMALL ENTITY COMPLIANCE GUIDE

Rates for Interstate Inmate Calling Services

FCC 22-76

WC Docket No. 12-375

Released September 30, 2022

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

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

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

TABLE OF CONTENTS

I. OBJECTIVES OF THE PROCEEDING	1
II. COMPLIANCE REQUIREMENTS	2
A. Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities.....	2
B. Inmate Calling Services	5
III. RECORDKEEPING AND REPORTING REQUIREMENTS	8
IV. IMPLEMENTATION DATE	9
V. INTERNET LINKS	9

I. OBJECTIVES OF THE PROCEEDING

In the *Rates for Interstate Inmate Calling Services*, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (rel. September 30, 2022), the Federal Communications Commission (Commission) acted to improve access to communications services for incarcerated people with communication disabilities, and adopted other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services.¹ Historically, the Commission used the term “inmate calling services” or “ICS” when referring to phone services provided to incarcerated people. In 2023, the Commission began using the term “incarcerated people’s communications services” or “IPCS” instead of “inmate calling services” or “ICS” to refer to the broader range of communications services subject to the Commission’s jurisdiction following the enactment of the Martha Wright-Reed Just and Reasonable Communications Act of 2022.²

The Commission has an obligation under section 225 of the Communications Act of 1934, as amended (Act), to ensure that Telecommunications Relay Services (TRS) are available, to the extent possible, and in the most efficient manner, to individuals with communication disabilities.³ This obligation supplements and focuses the Commission’s obligation under section 201(b) of the Act to ensure all people, including incarcerated people, have access to calling services under just and reasonable rates, terms, and practices.⁴

In May 2021, the Commission issued a Third Report and Order in this docket that, among other actions, reaffirmed its commitment to ensure that incarcerated people with disabilities have access to functionally equivalent telecommunications services.⁵ In the *2021 ICS Order*, the Commission lowered, on an interim basis, its caps on the amounts providers serving prisons or jails with 1,000 or more incarcerated people may charge for interstate calls and capped, for the first time, the providers’ charges for international calls. An accompanying Fifth Further Notice of Proposed Rulemaking was issued with the *2021 ICS Order* proposing to expand access to all eligible relay services for incarcerated people with communication disabilities, and seeking comment on a number of other issues, including the methodology to be used in setting permanent interstate and international rate caps, the need for periodic data collections, and additional reforms to our ancillary service charge rules.⁶

In the *2022 ICS Order*, the Commission adopted several requirements to improve access to communications services for incarcerated people with communication disabilities. It required that providers of incarcerated people’s communications service provide access to all forms of relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., city, county, state, or the United States)

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022) (*2022 ICS Order*).

² Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

³ 47 U.S.C. § 225(b)(1). TRS are telephone transmission services that provide the ability of an individual with a communications disability to engage in communication in a manner that is functionally equivalent to the ability of a hearing individual who does not have a communications disability. *Id.* § 225(a)(3).

⁴ *Id.* § 201(b).

⁵ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021).

⁶ *Id.*

totals 50 or more persons.⁷ It also required that where providers of incarcerated people's communications service are required to provide access to all forms of TRS, they also must allow American Sign Language (ASL) direct, or point-to-point video communication.⁸ The Commission clarified and expanded the scope of the restrictions on such providers assessing charges for TRS calls, expanded the scope of the required annual reports to reflect the above changes, and modified TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.

The Commission also adopted reforms to address allegations of abusive provider practices. For example, the Commission prohibited providers from seizing, or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, after which providers are required to refund the balance or treat the funds in accordance with any applicable state law requirements. Additionally, the Commission lowered the cap on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider, and lowered the cap on provider charges for processing credit card, debit card, and other payments to calling services accounts.

II. COMPLIANCE REQUIREMENTS

In the *2022 ICS Order*, the Commission adopted reforms to improve access to, and reduce the costs of, communications services for incarcerated people with communication disabilities. More specifically, modifications and changes to the Commission's rules were made to Subpart F Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities, and Subpart FF Inmate Calling Services.

A. Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

The Commission's adoption of the requirement that providers of incarcerated people's communications services provide access to all forms of relay services and direct video communications for incarcerated people who communicate using ASL resulted in two changes to the terms associated with the provision of video services for incarcerated people who communicate using ASL in such settings. The term, Carceral point-to-point video service was added to section 64.601 of the Commission's rules, and the term, Qualified Direct Video Entity in section 64.601 of the Commission's rules was amended to include carceral point-to-point communications.

1. ***Definitions and provisions of general applicability. (47 CFR §§ 64.601(a)(11), (a)(35(i)-(ii)))***

Carceral point-to-point video service, means a point-to-point video service that enables incarcerated people to engage in real-time direct video communication in ASL with another ASL speaker.

Qualified Direct Video Entity, providers of incarcerated people's communications services requesting authorization to provide point-to-point video service in correctional facilities that enable incarcerated people to engage in real-time direct video communication in ASL, means

⁷ 47 CFR § 64.6040(b). The forms of TRS eligible for TRS Fund compensation are Traditional text telephone (TTY)-based TRS, Speech-to-Speech Relay Service (STS), (CTS), Internet Protocol Captioned Telephone Service (IP CTS); non-Internet Protocol Captioned Telephone Service; Internet Protocol (IP) Relay Service; and Video Relay Service (VRS).

⁸ 47 CFR § 64.6040(b)(2)(ii).

an individual or entity that is approved by the Commission for access to the TRS Numbering Database that is engaged in Carceral point-to-point video service as that term is defined in section 64.601(a).

The TRS mandatory minimum standards were updated to clarify specific provisions relating to the number and types of calls, in the provisioning of TRS services in correctional facilities.

2. *Mandatory Minimum Standards. (47 CFR §§ 64.604(a)(3)(i), (a)(3)(ix))*

Consistent with the obligations of telecommunications carrier operators, Communications Assistants (CAs) are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services, except that the number and duration of calls to or from incarcerated persons may be limited in accordance with a correctional authority's generally applicable policies regarding telephone calling by incarcerated persons.

TRS providers serving incarcerated persons are not required to allow types of calls or calling features that are not permitted for hearing people incarcerated in the correctional facility being served.

The Internet-based TRS registration requirements applicable to individual user registration, enterprise registration for VRS, and verification of registration data were modified to facilitate the use of the registration procedures by providers of Internet-based TRS service in a correctional setting.

3. *Internet-based TRS registration and verification. (47 CFR § 64.611(k)(1)(i)-(iv), (k)(2))*

(1) *Individual user registration. (47 CFR § 64.611(k)(1)(i)-(iv))*

Registration information and documentation. If an incarcerated individual eligible to use TRS registers with an Internet-based TRS provider, the provider must collect and transmit to the TRS User Registration Database the information and documentation, except that:

- (i) The residential address specified for such incarcerated person must be the name of the correctional authority with custody of that person along with the main or administrative address of such authority;
- (ii) A Registered Location does not need to be provided; and
- (iii) If an incarcerated person does not have a Social Security number or Tribal Identification number, an identification number assigned by the correctional authority along with the facility identification number, if there is one, may be provided in lieu of the last four digits of a Social Security number or a Tribal Identification number.

Verification of Video Relay Services (VRS) and Internet Protocol Captioned Telephone Service (IP CTS) registration data. An incarcerated person's identity and address may be verified for purposes of VRS or IP CTS registration, based on documentation, such as a letter or statement, provided by an official of a correctional authority that states the name of the person; the person's identification number assigned by the correctional authority; the name of the correctional authority; and the address of the correctional facility. The VRS or IP CTS provider must transmit the verification documentation to the TRS User Registration Database administrator.

Upon release (or transfer to a different correctional authority) of an incarcerated person who has registered for VRS or IP CTS, the VRS or IP CTS provider with which the person has registered must update the person's registration information within 30 days after the release or transfer. The updated information must include, in the case of release, the individual's full residential address and Registered Location, and in the case of transfer, the updated information must include the name of the person; the person's identification number assigned by the correctional authority; the name of the correctional authority; and the address of the correctional facility.

VRS providers must not allow dial-around calls by incarcerated persons.

- (2) *Enterprise user registration for VRS.* A TRS Provider that is providing VRS to incarcerated individuals under enterprise registration may assign to a correctional authority a pool of telephone numbers that may be used interchangeably with any videophone or other user device made available for the use of VRS in correctional facilities overseen by such authority. The address of the organization specified may be the main or administrative address of the correctional authority, and a Registered Location does not need to be provided.

To facilitate the provision of carceral point-to-point video service, the Commission expanded the definition of qualified direct video entities to include entities that provide carceral point to video communications and allow such entities to seek certification as a qualified direct video entity.

4. *Numbering directory for Internet-based TRS users. (47 CFR §§ 64.613(a)(2), (c)(1)(v), (c)(3)(ii), (c)(5)(ii)-(iii), (c)(6) and (c)(7)(iii)-(iv))*

For each record associated with a geographically appropriate North American Numbering Plan (NANP) telephone number for a registered VRS user, enterprise videophone, public videophone, direct video customer support center, carceral point-to-point video service, or hearing point-to-point video user, the Uniform Resource Identifier (URI) must contain a server domain name or the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI must contain the user's username and domain name that can be subsequently resolved to reach the user.

For direct video customer support and carceral point-to-point video service, any person seeking to access the TRS Numbering Directory as a Qualified Direct Video Entity must submit an application to the Commission and are subject to a number of requirements, including:

- (1) The application must include certification that the applicant's description of service meets the definition of direct video customer support or carceral point-to-point video service and that the information provided is accurate and complete.
- (2) Authorization to access the TRS Numbering Directory will terminate automatically if one year passes with no call-routing queries received regarding any of the Qualified Direct Video Entity's NANP telephone numbers for direct video customer support.
- (3) A Qualified Direct Video Entity must comply with all relevant rules and obligations applicable to VRS providers' access to the TRS Numbering Directory, and the use of numbers provisioned in the TRS Numbering Directory, including:

- (A) Being able to make point-to-point calls to any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, the specified technical standards in section 64.621(b); and
 - (B) For direct video customer support being able to receive point-to-point or VRS calls from any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, specified technical standards in section 64.621(b).
- (4) A Qualified Direct Video Entity engaged in direct video customer support must ensure that each customer support center is able to initiate a call transfer that converts a point-to-point video call into a VRS call, in the event that a VRS user communicating with a direct video customer agent needs to be transferred to a hearing person while the call is in progress. Each VRS provider must be capable of activating an effective call transfer procedure within 60 days after receiving a request to do so from a Qualified Direct Video Entity engaged in direct video customer support.
- (5) For each direct video number to be entered into the TRS Numbering Directory, unless otherwise instructed by the TRS User Registration Database administrator, a Qualified Direct Video Entity must create an equivalent entry in the TRS User Registration Database by providing, among other information:
- (A) The name of the correctional facility or end-user customer support center (if different from the Qualified Direct Video Entity); and
 - (B) Contact information for the correction facility or end-user customer support call centers.

B. Inmate Calling Services

In the *2022 ICS Order*, the Commission clarified and expanded the scope of the restrictions on providers of incarcerated people's communications services assessing charges for TRS calls, expanded the scope of the annual reports to reflect these rule changes, and adopted reforms to address allegations of abusive ICS provider practices. These changes are reflected in section 47 CFR Part 64 Subpart FF of the Commission's rules. Additionally, two new terms relevant to the adopted reforms, "Controlling Judicial or Administrative Mandate" and "Jurisdiction," were added to the definitions in 47 CFR § 64.6000, and the definitions of the terms "Jail" and "Prison" in this section were amended to conform the wording of those rules with the Commission's intent when it originally adopted those definitions.

1. Definitions. (47 CFR §§ 64.6000(m)(3), (r), (y)(1)-(4), (z)(1)-(2))

Jail. The definition of jail is expanded to include a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are post-conviction and awaiting transfer to another facility. It also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional inmates; facilities used to detain individuals, operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities.

Prison. The definition of prison is expanded to include public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a Jail but in which the majority of inmates are post-conviction and are committed to confinement for sentences of longer than one year.

Controlling Judicial or Administrative Mandate, a new term, means:

- (1) A final court order requiring an incarcerated person to pay restitution;
- (2) A fine imposed as part of a criminal sentence;
- (3) A fee imposed in connection with a criminal conviction; or
- (4) A final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to September 30, 2022, that allows or requires that an Inmate Calling Service Provider act in a manner that would otherwise violate the Commission's rules regarding interim protections of consumer funds in inactive accounts.

Jurisdiction, a new term, means:

- (1) The state, city, county, or territory where a law enforcement authority is operating or contracting for the operation of a Correctional Facility; or
- (2) The United States for a Correctional Facility operated by or under the contracting authority of a federal law enforcement agency.

2. ***Ancillary Service Charges. (47 CFR §§ 64.6020(b)(2), (b)(5))***

The rate providers charge for a permitted Single-Call and Related Services must not be more when the transaction is paid for through an automated payment system, \$3.00 per transaction, plus the effective, per-minute rate; or when the transaction is paid via a live agent, \$5.95 per transaction, plus the effective, per-minute rate.

The rate providers charge for a permitted Third-Party Financial Transaction Fee, must not be more than when the transaction is paid through an automated payment system, \$3.00 per transaction; or when the transaction is paid via a live agent, \$5.95 per transaction.

3. ***Communications Access for Incarcerated People with Communication Disabilities. (47 CFR §§ 64.6040(a), (b)(1), (b)(2)(i)-(iii), (c)(1)-(4), (d)(1)-(4))***

A Provider must provide incarcerated people access to TRS and related communication services, except where the correctional authority overseeing a facility prohibits such access.

A Provider must provide access for incarcerated people with communication disabilities to Traditional TTY-based TRS TTY and STS. Beginning January 1, 2024, a Provider serving a correctional facility in any jurisdiction with an Average Daily Population of 50 or more incarcerated persons must:

- (1) Provide access to any form of TRS in addition to TTY-based TRS and STS, that is eligible for TRS Fund support (except that a Provider need not provide access to non-IP CTS in any facility where it provides access to IP CTS), where broadband Internet access

service is available; and

- (2) Provide access to a point-to-point video service that allows communication in ASL with other ASL users, where broadband Internet access service is available; and
- (3) Provide access to non-IP CTS, in addition to TTY and STS, where broadband Internet access service is not available.

As part of its obligation to provide access to TRS, a Provider must:

- (1) Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a correctional facility, incarcerated individuals eligible to use TRS can access at least one certified provider of each form of TRS required by the Commission's rules;
- (2) Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS for effective communication, and all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the ICS provider's network;
- (3) Provide any assistance needed by TRS providers in collecting the registration information and documentation required from incarcerated users and correctional authorities; and
- (4) Notify the TRS provider(s) with which an incarcerated person has registered, when an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority.

Charges for TRS and related communication services are subject to the following requirements:

- (1) Except as permitted below, no Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, or any charge for the use of a device or transmission service when used to access TRS from a correctional facility.
- (2) When providing access to IP CTS or CTS, a Provider may assess a charge for such IP CTS or CTS call that does not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, jurisdiction, and time-of-day placed to or from an individual incarcerated at the same correctional facility.
- (3) When providing access to a point-to-point video service for incarcerated individuals with communication disabilities who can use ASL, the total charges or fees that a Provider levies on or collects from any party to such point-to-point video call, including any charge for the use of a device or transmission service, must not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, jurisdiction, and time-of-day placed to or from an individual incarcerated at the same correctional facility.
- (4) Providers are prohibited from levying or collecting any charge in excess of 25

percent of the applicable per-minute rate for TTY-to-TTY calls when such calls are associated with incarcerated people's communications services.

4. ***Interim Protections of Consumer Funds in Inactive Accounts. (47 CFR §§ 64.6130(a)(1)-(3), (b), (c), (d), (e))***

All funds deposited into a debit calling or prepaid calling account that can be used to pay for interstate or international [incarcerated people's communications services](#) or associated ancillary services remain the property of the account holder unless or until the funds are either:

- (1) Used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established;
- (2) Disposed of in accordance with a Controlling Judicial or Administrative Mandate; or
- (3) Disposed of in accordance with applicable state law requirements, including, but not limited to, requirements governing unclaimed property.

No provider is permitted to seize or otherwise dispose of unused funds in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, or at the end of any alternative period set by state law, except as provided in section 64.6130(a), explained above, or through a refund to the customer.

The 180-day period, or alternative period set by state law, must be continuous. Any of the following actions by the account holder or the incarcerated person for whose benefit the account was established ends the period of inactivity and restarts the 180-day period:

- (1) Depositing, crediting, or otherwise adding funds to an account;
- (2) Withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or
- (3) Expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account.

After 180 days of continuous account inactivity have passed, or at the end of any alternative period set by state law, the provider must make reasonable efforts to refund the balance in the account to the account holder.

If a provider's reasonable efforts to refund the balance of the account fail, the provider must treat the remaining funds in accordance with applicable state consumer protection law requirements concerning unclaimed funds or the disposition of such funds.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The 2022 ICS Order contains new or modified information collection and reporting requirements that are codified in section 64.6060 of the Commission's rules, which set forth requirements for annual reports and certifications. In addition to the information on interstate, intrastate, and international incarcerated people's communications services that providers are already required to include in their annual reports to the Commission, providers must also include in those reports to the Commission the following information for each facility pursuant to 47 CFR §§ 64.6060(a)(5), (a)(6)(i)-(iii), and (a)(7)):

1. The types of TRS that may be accessed from the facility.

2. The number of calls completed during the reporting period for each of the following categories: (a) TTY-to-TTY calls; (b) point-to-point video calls placed or received by ASL users as those terms are defined in section 64.601(a); and (c) TRS calls, broken down by each form of TRS that can be accessed from the facility.
3. The number of complaints that the reporting provider received in each of the categories set forth in section 64.6060((a)(6).

IV. IMPLEMENTATION DATES

The rules adopted in the *2022 ICS Order* became effective on January 9, 2023, except for section 64.611(k)(1)(i-iii), which became effective on December 21, 2023; section 64.6040(c), which became effective on January 16, 2024; and section 64.6060(a)(5-7), which will not become effective until after the Office of Management and Budget (OMB) completes any review required under the Paperwork Reduction Act. Once OMB completes that review, the Wireline Competition Bureau will publish a notice in the Federal Register establishing an effective date for section 64.6060(a)(5-7).

V. INTERNET LINKS

A copy of the *2022 ICS Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-22-76A1.pdf>.

A copy of the Federal Register Summary of the *2022 ICS Order*, 87 Fed. Reg. 75496 (Dec. 9, 2022) is available at: <https://www.govinfo.gov/content/pkg/FR-2022-12-09/pdf/2022-25192.pdf>.

A copy of the Federal Register notifications announcing effective dates and corrections are available at:

88 Fed. Reg. 88257 (Dec. 21, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28007.pdf>.

89 Fed. Reg. 269 (Jan. 3, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-03/pdf/2023-28765.pdf>.

89 Fed. Reg. 2514 (Jan. 16, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2024-00350.pdf>.

89 Fed. Reg. 8549 (Feb. 8, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-02-08/pdf/2024-02384.pdf>.



Federal Communications Commission
Washington, D.C. 20554

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DA 24-406

SMALL ENTITY COMPLIANCE GUIDE

**Amendment of Part 73 of the Commission's Rules Related to
Full Power Television and Class A Television Stations**

**FCC 23-72
MB Docket Nos 40. 22-227
Released September 18, 2023**

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

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

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

TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS	1
	A. Clarifications Made as Part of the Reorganization of the Commission's Broadcast	
	Television Rules	1
	B. Protection of Land Mobile Radio Service	3
	C. Technical Modifications	3
	1. Coverage Area	3
	2. Antenna Patterns	3
	3. Distributed Transmission System Rule	3
	4. Transport Stream ID	3
	5. Class A Television U.S.-Mexico Border Zone	4
	6. Minimum Video Program Requirements	4
	7. Electronic Filing and Submissions	4
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	5
IV.	IMPLEMENTATION DATE	5
V.	INTERNET LINKS	5

I. OBJECTIVES OF THE PROCEEDING

The *Report and Order*¹ reflects the Commission's effort to update its rules for full power and Class A television stations to reflect the current operating environment following the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. Largely consistent with the proposals set forth in the *Notice of Proposed Rulemaking (NPRM)* adopted in September 2022,² the *Report and Order* adopts rules to simplify, streamline, and modernize existing rules and procedures, which should reduce compliance costs, and make compliance with the Commission's licensing requirements easier for full power and Class A television stations. The *Report and Order* seeks to further the Commission's goal of ensuring that its rules clearly reflect the Commission's requirements, and are understandable to all stakeholders.

The *Report and Order* deletes outdated rules that are no longer valid given changes in Commission-adopted policy, such as the elimination of the comparative hearing process to award and renew broadcast licenses. Other non-substantive, technical revisions the *Report and Order* makes include updating previously-adopted station license periods, deleting obsolete rules governing the post-incentive auction transition period, and correcting or updating section headings, spelling, contact information, and rule cross-references, or language inadvertently omitted from a rule. As part of this comprehensive update, the *Report and Order* also restructures a portion of the Commission's rules primarily consisting of the technical licensing, operating, and interference rules for television, and makes some minor clarifications and amendments.

The *Report and Order* also adopts updates to the coordinates previously found throughout section 73.623(e) (which the *Report and Order* reorganizes into section 73.617(a)), from NAD 27 to NAD 83 and otherwise conforms the values previously found in section 73.623(e) with those found in section 90.303. These coordinates are used only to determine where the Commission will or will not grant applications.

Finally, the *Report and Order* updates the Commission's rules to reference the current designation for form numbers (e.g., FCC Form 2100), and to require electronic filing in the Commission's Licensing and Management System (LMS) where applicable, or otherwise through electronic submission, and clarifies what documentation is required when applications are submitted with various kinds of directional patterns.

II. COMPLIANCE REQUIREMENTS

A. Clarifications Made as Part of the Reorganization of the Commission's Broadcast Television Rules

The *Report and Order* reorganizes a portion of the Commission's television rules and also offers some clarifications and amendments. With respect to the rule clarifications, the *Report and Order* clarifies in section 73.614(b) that all applications for new full power television stations, applications for changes in authorized full power television stations, and petitions for changes to the Table of TV Allotments must comply with the digital power limits that were previously found in section 73.622(f)(5)-(8). For stations requesting distributed transmissions system (DTS) operation pursuant to section 73.626, the *Report and Order* clarifies that the 100 watt minimum effective radiated power (ERP) requirement applies to at least one site in the DTS.

The amended rules also include a new paragraph 73.617(e) to codify a long-standing Commission practice to place a condition on all television broadcast station authorizations that result in a change in

¹ *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 (Sept. 19, 2023) (*Report and Order*).

² *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, Notice of Proposed Rulemaking, FCC 22-73 (Sept. 29, 2022) (*NPRM*).

coverage area, including all authorizations for new stations, which requires TV broadcasters to identify and notify hospital and other health care facilities within the station's coverage area to avoid interference to medical telemetry devices.

In addition, in section 73.622(a), the *Report and Order* modifies the language to clarify the rule sections specific to petitions to modify the Table of TV Allotments. The *Report and Order* redesignates the language in section 73.622(d)(2) as section 73.622(d), clarifies the rule text to indicate this subsection applies to all allotments, and clarifies that the “reference coordinates” for each allotment are those of the authorized facility (or for new allotments, the coordinates given in the order amending the Table of TV Allotments). The *Report and Order* relocates text relating to the minimum distance separations for new TV allotments from section 73.623(d) to a new section 73.622(k). In section 73.623(a), the *Report and Order* modifies the language to clarify the rule sections specific to application processing and removes discussion of modifications to the Table of TV Allotments.

With respect to the reorganization of the television rules, the *Report and Order* includes a table of cross-references so that users of our rules can more easily locate the new location of rules. A copy of the table found in the *Report and Order* is included below for ease of reference.

Table 1: Cross-references	
Instead of referencing...	Reference...
§ 73.614(b)(7) . . .	. . . § 73.625(c)(1).
§ 73.616(a) . . .	. . . § 73.622(a).
§ 73.616(b) . . .	. . . § 73.622(d).
§ 73.616(c) . . .	. . . § 73.619(d).
§ 73.616(d) . . .	. . . § 73.620(c).
§ 73.616(d)(2) . . .	. . . § 73.620(a).
§ 73.616(e) . . .	. . . § 73.620(d).
§ 73.616(g) . . .	. . . § 73.620(f).
§ 73.622(b) . . .	. . . § 73.622(j).
§ 73.622(c) . . .	. . . § 73.623(b).
§ 73.622(e) . . .	. . . § 73.619(c).
§ 73.622(f)(5) . . .	. . . § 73.614(b)(6).
§ 73.622(f)(6) . . .	. . . § 73.614(b)(1).
§ 73.622(f)(7) . . .	. . . § 73.614(b)(2).
§ 73.622(f)(8) . . .	. . . § 73.614(b)(3).
§ 73.622(h) . . .	. . . § 73.611.
§ 73.622(i) . . .	. . . § 73.622(j).
§ 73.623(c)(1) . . .	. . . § 73.618(a).
§ 73.623(c)(2) . . .	. . . § 73.620.
§ 73.623(c)(3) . . .	. . . § 73.620(b).
§ 73.623(c)(4) . . .	. . . § 73.620(a).
§ 73.623(c)(5) . . .	. . . § 73.620(d).
§ 73.623(d) . . .	. . . § 73.622(k).
§ 73.623(e) . . .	. . . § 73.617(a).
§ 73.623(f) . . .	. . . § 73.617(c).
§ 73.623(g) . . .	. . . § 73.620(e).
§ 73.625(a) . . .	. . . § 73.618.
§ 73.625(b) . . .	. . . § 73.619(b).
§ 73.683(c) . . .	. . . § 73.619(a).
§ 73.685(b) . . .	. . . § 73.618(b).
§ 73.685(d) . . .	. . . § 73.617(d).
§ 73.685(f) . . .	. . . § 73.625(c).
§ 73.687(e) . . .	. . . § 73.617(b).

B. Protection of Land Mobile Radio Service (47 CFR § 73.617(a))

New section 73.617(a), which supersedes section 73.623(e), replaces geographic coordinates that use the 1927 North American Datum with the current 1983 North American Datum and otherwise conforms the values with those found in part 90 of the Commission's rules. These updates do not change the required amount of interference protection between full power and land mobile operations. Absent any actual interference, the Commission will not require existing full power television stations to make any relocation or other technical changes solely due to these coordinate updates.

C. Technical Modifications

1. Coverage Area – Determining Coverage (47 CFR § 73.625)

In determining how coverage and height above average terrain (HAAT) are to be calculated or determined in full power and Class A television licensing, the amended rules remove the second sentence of section 73.625(b)(2), which indicates that when the relative field strength at a depression angle is 90% or greater, the 100% value should be used. In addition, the amended rules remove references in section 73.625 to outmoded paper maps, and replace them with a reference to the National Elevation Dataset and other similar bald earth terrain datasets that are currently used by the Commission and industry. In section 73.625(b)(6), the Commission clarifies that such calculations are to be done by computer rather than by paper calculation, and that to the extent a submission to the Commission uses sources different from those reflected in the Commission's rules, those sources should be clearly identified in the submission. The Commission provides its *TVStudy* software free of charge for this purpose.³ The Commission also clarifies that it will allow stations to continue to use a historic HAAT calculation for a given location if one was previously used to comply with the rules regarding power limits.

2. Antenna Patterns (47 CFR § 73.625)

Regarding antenna patterns, the amended rules clarify in section 73.625(c)(3)(ii) that the horizontal power is to be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement. Commission staff can ask a station for additional documentation for the purpose of coordination with Mexico or Canada should it be requested. In addition, revised section 73.625(c)(3)(v) now requires licensees to submit antenna patterns in the form of a .pdf attachment to an application filed in LMS, and clarifies that similar plots are required for elevation or matrix patterns submitted in the LMS form. With respect to matrix antenna patterns described in revised section 73.625(c)(3)(viii), the Commission will now require only one or two representative azimuth and elevation patterns be supplied in a .pdf attachment and if additional visualizations are needed, the tabular spreadsheet data can be used in spreadsheet software to produce them.

3. Distributed Transmission System Rule (47 CFR § 73.626)

The Commission amended its DTS rule, section 73.626, to make the intent and application of the rule less ambiguous by defining the term “authorized facility,” replacing all uses of the term “reference facility” with the term “authorized facility” in the appropriate locations, and replacing the term “reference point” with “site of its authorized facility” in places where the term “reference point” was improperly used. The amended rule also makes clear when the Table of Distances values should be applied.

4. Transport Stream ID (47 CFR § 73.1201)

The Commission's amended rules require that all full-power and Class A television stations broadcast with their assigned transport stream ID (TSID) or bit stream ID (BSID) in the ATSC 3.0

³ See <https://www.fcc.gov/oet/tvstudy> to obtain the software and documentation.

context. All stations must broadcast with their assigned TSID, or BSID as applicable, during their hours of operation.

5. Class A Television U.S.-Mexico Border Zone (47 CFR § 73.6024)

Revised section 73.6024(d) requires Class A television stations within 275 kilometers of the U.S.-Mexico border to specify a full-service emission mask in any modification application.

6. Minimum Video Program Requirements (47 CFR § 73.624(b))

The *Report and Order* updates a Class A television rule to conform the rule with requirements for full power and low power and television translator stations. Specifically, Class A stations must use a minimum 480i video resolution.

7. Electronic Filing and Submissions⁴

The Commission also updates its rules to provide full power and Class A licensees and permittees with accurate information about current Commission forms and filing procedures, including the removal of obsolete forms. The following rules update application LMS form numbers, or will now require submission in LMS:

47 CFR § 73.1350(h) (Transmission system operation);

47 CFR § 73.1560(a)(1) and (d) (Operating power and mode tolerances);

47 CFR § 73.1615(c) (Operating during modification of facilities);

47 CFR § 73.1620(a)(1)-(3) (Program tests);

47 CFR § 73.1635(a)(2) (Special temporary authorizations (STA));

47 CFR § 73.1675(b) (Auxiliary antennas);

47 CFR § 73.1690(b) and (c)(3) (Modification of transmission systems);

47 CFR § 73.1740(a)(4) (Minimum operating schedule);

47 CFR § 73.1750 (Discontinuance of operation);

47 CFR § 73.2080(c)(6) and (f) (Equal employment opportunities (EEO));

47 CFR § 73.3500 (Application and report forms);

47 CFR § 73.3533(a)(1) and (a)(4)-(8) (Application for construction permit or modification of construction permit);

47 CFR § 73.3536(b)-(c) (Application for license to cover construction permit);

47 CFR § 73.3540(c)-(f) (Application for voluntary assignment or transfer of control);

47 CFR § 73.3541(b) (Application for involuntary assignment of license or transfer of control);

47 CFR § 73.3544(b)-(c) (Application to obtain a modified station license);

⁴ 47 CFR §§ 73.1250(e); 73.1350(h); 73.1560(a)(1) and (d); 73.1615(c); 73.1620(a)(1)-(3); 73.1635(a)(2); 73.1675(b); 73.1690(b) and (c)(3); 73.1740(a)(4); 73.1750; 73.2080(c)(6) and (f); 73.3500; 73.3533(a)(1) and (a)(4)-(8); 73.3536(b)-(c); 73.3540(c)-(f); 73.3541(b); 73.3544(b)-(c); 73.3549; 73.3550(a) and (j); 73.3578(b); 73.3587; 73.3598(c); 73.5005(a); and 73.5006(b).

47 CFR § 73.3549 (Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders);

47 CFR § 73.3550(a) and (j) (Requests for new or modified call sign assignments);

47 CFR § 73.3578(b) (Amendments to applications for renewal, assignment or transfer of control);

47 CFR § 73.3587 (Procedure for filing informal objections);

47 CFR § 73.3598(c) (Period of construction);

47 CFR § 73.5005(a) (Filing of long-form applications); and

47 CFR § 73.5006(b) (Filing of petitions to deny against long-form applications).

In addition, 47 CFR § 73.1250(e) (Broadcasting emergency information) now requires a report in letter form to the Commission's main office indicated in section 0.401(a) of the Commission's rules.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The amended and revised rules contain new information collection requirements for full power television and Class A stations. The details of the reporting and recordkeeping requirements adopted in the *Report and Order* are discussed in Section II of this guide under the Compliance Requirements.

IV. IMPLEMENTATION DATE

The amendments to the rules in the *Report and Order* became effective March 4, 2024, including the following rules that required approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: sections 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; and 73.6025.

V. INTERNET LINKS

A copy of the *Report and Order* is available at: <https://www.fcc.gov/document/fcc-updates-rules-television-and-class-television-stations>.

A copy of the Federal Register publications are available at:

<https://www.federalregister.gov/documents/2024/02/01/2023-24626/establishing-rules-for-full-power-television-and-class-a-television-stations>,

<https://www.federalregister.gov/documents/2024/02/29/2024-03956/establishing-rules-for-full-power-television-and-class-a-television-stations>.



PUBLIC NOTICE

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DA 24-407

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

WC Docket No. 18-89

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

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

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

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

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

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

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

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and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately \$5.6 billion in gross program support").

⁴ See 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *SCRIP Granted Applications Public Notice* at 2-3.

⁵ The Commission's rules provide that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the [Bureau] will pro-rate the available funding among all eligible providers in that prioritization category." 47 CFR § 1.50004(f)(1); see also 47 U.S.C. § 1603(d)(5)(A) ("[T]he Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.").

⁶ See 47 CFR § 1.50004(f)(1); see also *SCRIP Granted Applications Public Notice* at 2-3.

⁷ 47 U.S.C. § 1603(d)(6)(A); 47 CFR § 1.50004(h).

⁸ See 47 U.S.C. § 1603(d)(6)(C).

⁹ See 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2) ("Individual extensions. Prior to the expiration of the removal, replacement and disposal term, a Reimbursement Program recipient may petition the Wireline Competition Bureau for an extension of the term. The Wireline Competition Bureau may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.").

¹⁰ 47 CFR § 1.50004(h)(2); see also *2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173 and n.501.

¹¹ See, e.g., *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-875, para. 7 (WCB Sept. 22, 2023) (*Stealth Extension Order*) (granting an extension based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938, paras. 12-16 (WCB Oct. 10, 2023) (*WorldCell et al. Extension Order*) (granting extensions based in both funding issues and supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1016, paras. 12-16 (WCB Oct. 27, 2023) (*Point/SI Wireless Extension Order*) (granting extensions based on both funding issues and supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1110, paras. 8-11 (WCB Nov. 28, 2023) (*Triangle Telephone/Triangle Communication Extension Order*) (granting extension of time requests by Triangle Telephone Cooperative Association Inc. and Triangle

(continued....)

The Bureau strongly encourages recipients that intend to file a petition for an extension to do so as promptly as possible after determining that their circumstances meet the standard for an extension established in the statute and the Commission's implementing rules, and well in advance of the recipient's deadline, so the Bureau is able to fully consider and grant or deny the petition before the recipient's term expires. We remind recipients that requests for term extensions should specify both the specific grounds for the request and the specific facts and circumstances on which the recipient relies in asserting those grounds. Requests that lack adequate support may be denied or the recipient may be required to provide additional support, which could delay a decision on the request.

The lack of full funding will not necessarily be a sufficient showing for multiple extension requests, as recipients should continually make progress toward completing their projects by the end of their removal, replacement, and disposal term. The Bureau will evaluate the sufficiency of each individual extension request at the time it is filed in determining whether to grant or deny it. We emphasize that a recipient's statutory obligation to complete the permanent removal, replacement, and disposal of covered communications equipment or services exists regardless of the amount of funding it may receive through the Reimbursement Program pursuant to the Secure Networks Act. The Secure Networks Act and the Commission's rules require each Reimbursement Program recipient to remove, replace, and dispose of "all" its covered equipment and services.¹² Similarly, the Reimbursement Program FAQs (at 21) state that "[p]roviders are expected to remove, replace, and dispose of all Huawei and/or ZTE communications equipment and services in their networks as of the date of the submission of the application even if they receive a prorated allocation from the Reimbursement Program due to funding constraints."¹³

Consistent with the Commission's goal of streamlining its internal review processes,¹⁴ and further pursuant to our delegated authority,¹⁵ we announced in our *January 2024 Streamlined Resolution Public Notice* that we would, with that Public Notice, begin issuing a Public Notice, as necessary but not more frequently than monthly, disposing of pending petitions which seek an extension of an applicants' removal, replacement, and disposal terms, do not involve complicated and/or controversial issues, and can be addressed in a manner consistent with Commission and/or Bureau precedent.¹⁶ Accordingly, we

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Communication System, Inc. based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1196, para. 5 (WCB Dec. 21, 2023) (*GigSky, Inc. Extension Order*) (granting extension of time request by GigSky, Inc. based on funding issues).

¹² 47 U.S.C. § 1603(e)(4)(A)(ii) (recipient must file a final certification to show removal, replacement, and disposal of "all" covered equipment and services); 47 CFR 1.50004(m)(1) (same); *see also* 47 U.S.C. § 1603(d)(4)(A)(i)(I) (applicant must certify it has a plan to remove "any" covered equipment and services); 47 CFR § 1.50004(a)(3)(i)(A) (same).

¹³ <https://docs.fcc.gov/public/attachments/DA-24-234A2.pdf>. Within 10 days following the expiration of the removal, replacement, and disposal term, a recipient must file a final certification with the Commission indicating whether it has fully complied with all terms and conditions of the Reimbursement Program. 47 U.S.C. § 1603(e)(4)(A); 47 CFR § 1.50004(m)(1).

¹⁴ *See Report on FCC Process Reform*, GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) (*Process Reform Report*).

¹⁵ *See* 47 CFR §§ 0.91, 0.291, 1.50004(h)(2).

¹⁶ *Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 24-88, at 3 (WCB Jan. 31, 2024) (*January 2024 Streamlined Resolution Public Notice*). This approach further speeds the disposition of petitions seeking extension of the removal, replacement, and disposal term and to ensure the continued efficient administration of the Reimbursement Program, while at the same time fulfilling our obligation to thoroughly review the record before us. *Id.* Prior to issuance of the *January 2024 Streamlined Resolution Public Notice*, we had resolved petitions for extensions of recipients' removal, replacement, and disposal terms in stand-alone orders addressing each petition. The Bureau
(continued....)

hereby grant the pending petitions listed below for an extension of a recipient's term to remove, replace, and dispose of its covered equipment.¹⁷

Recipient – Board of Trustees, Northern Michigan University, SCRP0001040

Grounds for individual term extension – Board of Trustees, Northern Michigan University (NMU) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).¹⁸ NMU contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. NMU explains that it has split its project work into sequential phases based on the lack of full funding.¹⁹ While NMU believes that this approach will allow it to replace the sites used by the largest number of its customers first within the available funding, NMU notes that this split approach has resulted in delays to its overall project timeline.²⁰ NMU anticipates still further delays as it has not yet secured other funding to complete the required work.²¹ NMU also projects that it will take until December 2024 for it to complete its necessary replacement of one structurally compromised tower due to steel supply chain issues, and NMU expects that its required modifications to other towers will be delayed due to a lack of available and qualified vendors to perform the associated work.²² The Bureau finds NMU'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 and lack of full funding,²³ and accordingly grants the requested extension.

New removal, replacement, and disposal term (RRD term) expiration date – NMU's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 20, 2024 to January 20, 2025.

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routinely resolves other matters in the manner of the *January 2024 Streamlined Resolution Public Notice*, as appropriate. See, e.g., *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014) (stating that the Bureau will resolve certain Universal Service Fund matters in a streamlined public notice).

¹⁷ To the extent the requests cited in this Public Notice seek extensions of time based on grounds other than funding issues and supply chain issues, this Public Notice does not address those grounds.

¹⁸ See Board of Trustees, Northern Michigan University Request for Extension of Time, WC Docket No. 18-89 (filed Apr. 19, 2024).

¹⁹ *Id.* at 10-11.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 8-9.

²³ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

Recipient – Bristol Bay Cellular Partnership, SCRP0001182

Grounds for individual term extension – Bristol Bay Cellular Partnership (Bristol Bay) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).²⁴ Bristol Bay contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. As to the lack of funding, Bristol Bay states that the funding it received is not sufficient for it to replace its cellular core. Bristol Bay explains that it has therefore been actively pursuing additional funding and has, in the meantime, utilized hosted core services as a temporary measure towards fulfilling its removal, replacement, and disposal obligations.²⁵ In addition, Bristol Bay explains that supply chain issues and associated cost increases for logistics, air charters, and fuel have meaningfully increased and contributed to the delays it has experienced.²⁶ 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 supply chain issues and lack of full funding,²⁷ and accordingly grants the requested extension.

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 April 25, 2024 to October 25, 2024.

Recipients – Commnet Wireless, LLC, SCRP0001026; SCRP0001027; SCRP0001028; SCRP0001029; and NTUA Wireless, LLC, SCRP0001024; SCRP0001025 (Commnet Wireless and NTUA filed their extension requests jointly).

Grounds for individual term extension – Commnet Wireless, LLC (Commnet Wireless), on behalf of itself and its affiliate, NTUA Wireless, LLC (NTUA), requests an approximate six-month extension of its and NTUA's deadlines to remove, replace, and dispose of covered equipment and services in their networks under 47 CFR § 1.50004(h)(2) as to each of the above-identified applications.²⁸ Commnet Wireless contends that its and NTUA's ability to complete the removal, replacement, and disposal of covered equipment and services by their current deadlines has, through no fault of their own, been materially affected by the lack of full funding. Commnet Wireless explains that, with limited funding available, it and NTUA have had to undertake a lengthy and time-consuming process to reevaluate their plans and restructure the replacement strategy for covered equipment, and that this has resulted in delays and additional costs in completing their removal, replacement, and disposal work.²⁹ The Bureau finds Commnet

²⁴ See Request of Bristol Bay Cellular Partnership for Extension of Time, WC Docket No. 18-89 (filed Apr. 12, 2024).

²⁵ See *id.* at 3-4.

²⁶ See *id.*

²⁷ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

²⁸ See Request of Commnet Wireless, LLC, on behalf of itself and NTUA Wireless, LLC, for Extension of Time, WC Docket No. 18-89 (filed Apr. 12, 2024).

²⁹ See *id.* at 3, 7, 10-11, 14-15, 18-19 and 22-23.

Wireless's showing for itself and NTUA persuasive and that their situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,³⁰ and accordingly grants the requested extensions.

New RRD term expiration dates – Commnet 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 as follows:

- For File No. SCRP0001026, from July 15, 2024 to January 14, 2025;
- For File No. SCRP0001027, from July 27, 2024 to January 26, 2025;
- For File No. SCRP0001028, from July 28, 2024 to January 27, 2025; and
- For File No. SCRP0001029, from July 28, 2024 to January 27, 2025.

NTUA 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 as follows:

- For File No. SCRP0001024, from August 4, 2024 to February 3, 2025; and
- For File No. SCRP0001025, from August 5, 2024 to February 4, 2025.

Recipient – Mark Twain Communications Company, SCRP0001021

Grounds for individual term extension – Mark Twain Communications Company (Mark Twain) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).³¹ Mark Twain contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues and the lack of full funding. As to supply chain issues, Mark Twain states that it is still waiting on shipments of necessary customer premises equipment and core equipment, as shipments have continued to be delayed by its vendors.³² Mark Twain further describes an associated lack of available vendors to perform disposal steps.³³ In addition, Mark Twain explains that the lack of funding has caused delays, particularly as vendors have been unwilling to negotiate costs in view of high demand.³⁴ Mark Twain describes how it has sought to mitigate these issues by diverting resources from other business functions and projects and that it is currently under financial strain.³⁵ 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 and lack of full funding,³⁶ and accordingly grants the requested extension.

³⁰ 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.

³¹ See Request of Mark Twain Communications Company for Extension of Time, WC Docket No. 18-89 (filed Apr. 12, 2024).

³² See *id.*

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. (continued....)

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 June 6, 2024 to December 6, 2024.

Recipient – Pine Belt Cellular, Inc., SCRP0001038

Grounds for individual term extension – Pine Belt Cellular, Inc. (Pine Belt) requests an approximate six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).³⁷ Pine Belt contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues and the lack of full funding. On supply chain issues, Pine Belt states that it has experienced significant delays involving key hardware components needed for its core network, including a delay of several months in obtaining necessary servers, and that these delays have been compounded by difficulties retaining skilled labor to perform work on its core and its radio access network.³⁸ In addition, Pine Belt explains that the lack of funding has delayed its progress in completing its removal, replacement and disposal obligations despite its efforts to mitigate this shortcoming by setting aside other business activities to focus on them.³⁹ Despite these reported impediments, Pine Belt emphasizes that it has been able to replace and retire 3G network components, though other network components are still in service.⁴⁰ The Bureau finds Pine Belt’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 and lack of full funding,⁴¹ and accordingly grants the requested extension.

New RRD term expiration date – Pine Belt’s deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 18, 2024 to January 17, 2025.

Recipient – Plateau Telecommunications, Incorporated, SCRP0001112

Grounds for individual term extension – Plateau Telecommunications, Incorporated (Plateau Telecommunications) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁴² Plateau Telecommunications contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its

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16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

³⁷ See Request of Pine Belt Cellular, Inc. for Extension of Time, WC Docket No. 18-89, at 3-4 (filed Apr. 4, 2024).

³⁸ See *id.* at 2.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁴² See Request of Plateau Telecommunications, Inc. for Extension of Time, WC Docket No. 18-89 (filed Apr. 19, 2024).

own, been materially affected by the lack of full funding and supply chain issues. Plateau Telecommunications explains that it worked with external network engineering experts to reduce the operational footprint of its replacement network to reflect the limited funding available to it.⁴³ Plateau Telecommunications states that, as part of this work, it has experienced delays in developing its radio frequency design, involving extensive research and multiple redesigns, and that this work was only completed in October 2023, months later than originally planned.⁴⁴ Plateau Telecommunications also reports that it has experienced supply chain delays associated with its SIM card vendor, whose equipment is needed to transition to its new network.⁴⁵ Plateau Telecommunications now expects to receive the required SIM cards in June 2024, later than originally expected.⁴⁶ The Bureau finds Plateau Telecommunication'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 and lack of full funding,⁴⁷ and accordingly grants the requested extension.

New RRD term expiration date – Plateau Telecommunications' deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from July 18, 2024 to January 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 six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) as to each of the above-identified applications.⁴⁸ Point Broadband contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. As to the lack of funding, Point Broadband explains that, as a small, rural operation, it lacks financial resources and that the funding shortfall has thus meaningfully delayed its project schedule and compliance timeline.⁴⁹ Point Broadband further reports that it is still experiencing delays associated with replacing almost 200 routers in its network that it previously explained

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*

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 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁴⁸ See Request of Point Broadband Fiber Holding, LLC for Extension of Time, WC Docket No. 18-89 (filed April 4, 2024) (for application SCRP0001131) (Point Broadband SCRP0001131 Extension Request); see Request of Point Broadband Fiber Holding, LLC for Extension of Time, WC Docket No. 18-89 (filed April 5, 2024) (separately filed for each of applications SCRP0001128, SCRP0001129, SCRP0001130 and SCRP0001132). This is Point Broadband's first extension request as to application SCRP0001131 and second extension request as to each of applications SCRP0001128, SCRP0001129, SCRP0001130 and SCRP0001132.

⁴⁹ See, e.g., Point Broadband SCRP0001131 Extension Request at 1.

were tied to supply chain issues.⁵⁰ 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,⁵¹ and accordingly grants the requested extension.

New RRD term expiration dates – 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 as follows:

- For File No. SCRP0001128, from May 10, 2024 to November 10, 2024.
- For File No. SCRP0001129, from May 11, 2024 to November 11, 2024;
- For File No. SCRP0001130, from May 13, 2024 to November 13, 2024;
- For File No. SCRP0001131, from April 29, 2024 to October 29, 2024; and
- For File No. SCRP0001132, from May 13, 2024 to November 13, 2024.

Recipient – SI Wireless, LLC, SCRP0001013

Grounds for individual term extension – SI Wireless, LLC (SI Wireless) requests a second six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁵² SI Wireless contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues and other issues.⁵³ With regard to supply chain issues, SI Wireless states that it has continued to experience delays in obtaining replacement equipment, in some cases experiencing delays of 4-6 months.⁵⁴ It also asserts that equipment vendors have been focusing on their production of 5G equipment and have reduced or terminated their production of 4G LTE equipment, making it more difficult to access 4G-only LTE equipment.⁵⁵ SI Wireless states that these delays have impeded SI Wireless's ability to complete its removal, replacement, and disposal work by its current deadline. The Bureau finds SI 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.

⁵⁰ See *id.*; See also *Point/SI Wireless Extension Order* at 6 (citing Request of Point Broadband for Extension of Time, WC Docket No. 18-89 (filed Oct. 11, 2023)).

⁵¹ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5 (as to the lack of full funding); see *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5 (as to supply chain issues).

⁵² See SI Wireless, LLC Request for Extension of Time, WC Docket No. 18-89 (filed Apr. 24, 2024). SI Wireless previously was granted an extension in the *Point/SI Wireless Extension Order* at 5-7, paras. 12-18.

⁵³ SI Wireless does raise the lack of full funding as one basis for an extension, but we do not find it necessary to address SI Wireless's argument here, as the extension is justified on supply chain grounds.

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 (as to supply chain issues).

New RRD term expiration date – SI 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 May 24, 2024 to November 24, 2024.

Recipient – Southern Ohio Communication Services Inc., SCRP0001019

Grounds for individual term extension – Southern Ohio Communication Services Inc. (Southern Ohio) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁵⁷ Southern Ohio contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by the lack of full funding.⁵⁸ Southern Ohio states that it is a small service provider in rural Ohio with limited access to outside financing options. It asserts that the financial strain caused by the limited funding for the program led to a delay in ordering and receiving the remaining equipment needed to fully replace covered equipment in its network, of which over half the cost had to be financed by Southern Ohio independently due to lack of full funding. It states that this delay negatively impacted Southern Ohio’s timeline and made it impossible to complete the removal, replacement, and disposal of all covered equipment within the one-year period. The Bureau finds Southern Ohio’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 and lack of full funding.⁵⁹

New RRD term expiration date – Southern Ohio’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 April 6, 2024 to October 6, 2024.

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 -

⁵⁷ Request of Southern Ohio Communications Services Inc. for Extension of Time, WC Docket No. 18-89 (filed Apr. 2, 2024).

⁵⁸ Supplement to Request of Southern Ohio Communications Services Inc. for Extension of Time, WC Docket No. 18-89 (filed Apr. 10, 2024).

⁵⁹ 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.



Federal Communications Commission
Washington, D.C. 20554

April 30, 2024

DA 24-408

In Reply Refer to:

1800B3-JCB

Released: April 30, 2024

Selma Weather and Information Forum
c/o Randolph W. Williams
612 US Highway 80 E
Selma, AL 36701
randywselma@gmail.com

Re: **Selma Weather and Information
Forum**

New LPFM, Selma, AL

Facility ID No. 787789

Application File No. 0000231868

Petition for Reconsideration

Dear Applicant:

We have before us the Petition for Reconsideration (Petition)¹ filed by the Selma Weather and Information Forum (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Selma, Alabama.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window,³ and certified that it qualifies as local, as defined by the Commission's rules.⁴ On January 19, 2024, Bureau staff dismissed the Application for failure to meet the localism requirements in section 73.853(b)⁵ of the Commission's rules (Rules) because the Application identified a transmitting antenna site 560 miles east of the coast of North Carolina and noted that an amendment was not permitted under section 73.870(a) of the Rules.⁶

On February 1, 2024, Petitioner filed the Petition, seeking reinstatement of the Application and a change or amendment to correct a "clerical error" affecting the coordinates of its proposed antenna site

¹ Pleading File No. 0000237930 (filed Feb. 1, 2024).

² Application File No. 0000231868 (filed Dec. 7, 2023).

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

⁴ Application at Legal Certifications Section, Community-Based Criteria questions.

⁵ See 47 CFR § 73.853(b).

⁶ See *Broadcast Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (citing 47 CFR § 73.870(a)) (*Dismissal Public Notice*).

location.⁷ Specifically, Petitioner: 1) characterizes the coordinate error as a “single digit” “clerical error” on the part of its consultant; 2) states that its consultant, while manually entering coordinate data into LMS, “missed [a] transcription error despite a visible double check” and failed to “distinguish between ‘6’ and ‘8’ because of the small typeface size”; 3) states the Application indicates the intended location of the antenna “in several redundant ways”;⁸ 4) claims that “Several 2013-window LPFM applications [] also experienced dismissals due to location typos per 73.807(c), but were reinstated and corrected with the grant of a Petition for Reconsideration”;⁹ and 5) argues that an amendment could correct the error and warrant reinstatement of the Application *nunc pro tunc*.¹⁰

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original determination, or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.¹¹ Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Each LPFM applicant must qualify as local to be eligible for a license.¹² The Bureau staff verifies localism certifications, and performs technical evaluations, based on the antenna location coordinates specified in the “Antenna Location Data” section of the application and does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by typographical or other applicant errors.¹³

Although Petitioner certified in its Application that it qualifies as local,¹⁴ in the “Antenna Location Data” section of the Application it provided coordinates for its proposed antenna site that would position the station in the Atlantic Ocean off the coast of Bermuda, hundreds of miles removed from the United States and notably separated from its “jurisdiction” and desired service area of Selma, Alabama.

⁷ Petition at 1.

⁸ *Id.* at 2-3.

⁹ *Id.* at 7 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, and BNPL-20131114AVO (collectively, Reinstated 2013 LPFM Applications)).

¹⁰ *Id.* at 1.

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

¹² To qualify as local, a public safety radio service applicant, such as Petitioner, must have jurisdiction within the service area of the proposed station. See 47 CFR § 73.853(b)(3).

¹³ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014) (*Diocese of Portland*) (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”); see also *Procedures Public Notice*, DA 23-642 at 7-8 (cautioning LPFM applicants of this practice).

¹⁴ Application at Community-Based Criteria. Petitioner, a public safety radio service applicant, certified that it has jurisdiction within the service area of its proposed LPFM station. Petitioner also certified that it satisfies the physical headquarters and/or board member localism requirements for nonprofit educational organization applicants.

The Bureau, therefore, properly dismissed the Application for failure to meet the localism requirements of section 73.853(b) of the Rules.¹⁵

While LPFM applicants are currently allowed to submit amendments to their applications, pursuant to section 73.871(c) of the Rules, the amendments must be minor.¹⁶ Importantly, minor amendments are limited to site relocations of 11.2 km (6.9 miles) or less.¹⁷ The amendment requested by the Petitioner – to modify its proposed transmitting antenna site longitude of 67 to 87 degrees – clearly exceeds the site relocation limit established in the Rules, and is therefore, prohibited. Moreover, we reject Petitioner’s argument that the initial error is attributable to a mistake by its consultant and difficulties with LMS’s user interface and should therefore be excused.¹⁸ The Commission has long held that errors of technical assistants and difficulties with filing systems are not excuses for failure to adhere to the Rules.¹⁹

Finally, we reject Petitioner’s reliance on the Reinstated 2013 LPFM Applications. The Commission previously noted that the Reinstated 2013 LPFM Applications were reinstated pursuant to the Bureau’s former practice to allow otherwise prohibited corrective amendments where an Antenna Site Registration (ASR) number or technical exhibit identified the intended location of the transmission antenna.²⁰ Here, the Application lacked either an ASR number or a technical exhibit, and the other data the Petitioner relies on, such as its corporate address, do not in any way identify the intended coordinates of the transmitting antenna site. Moreover, the Reinstated 2013 LPFM Applications predate *Diocese of Portland*, where the Commission clarified that it would, going forward, rely solely on Tech Box data and prohibit applicants from curing a location deficiency in an application with a prohibited amendment.²¹ Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.²²

¹⁵ Although the *Dismissal Public Notice* correctly held that Petitioner failed to satisfy the localism requirements for the LPFM service set forth in section 73.853(b) of the Rules, it cited specifically to subsections 73.853(b)(1) and (2). Because Petitioner certified that it is a public safety radio service applicant, the *Dismissal Public Notice* should have cited to subsection 73.853(b)(3) of the Rules. Petitioner did not raise this issue in its Petition. We clarify that Petitioner’s application was defective under section 73.853(b)(3) of the Rules because it lacked jurisdiction in the coverage area identified in the Application.

¹⁶ See 47 CFR § 73.871(c).

¹⁷ See *id.* § 73.871(c)(1).

¹⁸ Petition at 1-2, 6.

¹⁹ See *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) (“the Commission has long held that ‘licensees are responsible for the acts and omissions of their employees and independent contractors’”); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) (“[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor”); *Robert J. and Katherine Bohn*, Forfeiture Order, 26 FCC Rcd 1188, 1190, para. 8 (MB 2011) (rejecting argument that lack of familiarity with filing system warranted reduction in proposed forfeiture).

²⁰ See *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065, 15066, para. 4 and n.12 (2014) (*People of Progress*).

²¹ See *Diocese of Portland*, 29 FCC Rcd at 15068; see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552, n.26 (2015) (citing *People of Progress* and *Diocese of Portland*).

²² See, e.g., *Renew Taylorsville*, Letter, DA 24-289 (MB 2024) (dismissing application based on Tech Box data and rejecting prohibited amendment to correct typographical errors); *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (same).

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Selma Weather and Information Forum, on February 1, 2024 (Pleading File No. 0000237930), IS DENIED.

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
Internet: <http://www.fcc.gov>

DA 24-409
April 30, 2024

DOMESTIC 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF BUCKLAND TELEPHONE COMPANY TO HANSON COMMUNICATIONS, INC.

WC Docket No. 24-57

By this Public Notice, the Wireline Competition Bureau grants an application filed by Buckland Telephone Company (Buckland) and Hanson Communications, Inc. (HCI) (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 Buckland to HCI.²

On March 29, 2024, the Bureau released a public notice seeking comment on the Application.³ No party filed comments in opposition to a grant of the Application, and the Bureau finds, upon consideration of the record, that granting the Application will serve the public interest, convenience, and necessity.⁴ Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103,

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

² Domestic Section 214 Application Filed for the Transfer of Control of Buckland Telephone Company to Hanson Communications, Inc., WC Docket No. 24-57 (filed Feb. 27, 2024) (Application). On March 22, 2024 Applicants filed a supplement to their domestic section 214 application. Letter from Salvatore Taillefer, counsel to Hanson Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-401 (filed Mar. 22, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Applications Filed for the Transfer of Control of Buckland Telephone Company to Hanson Communications, Inc.*, WC Docket No. 24-57, Public Notice, DA 24-314 (WCB 2024).

⁴ Buckland, an Ohio corporation, provides service as a rural incumbent local exchange carrier (LEC) to approximately 378 access lines in the Allen and Auglaize counties of Ohio. Application at 5; Supplement at 5. Buckland also provides other communications services in the same service area and has been designated as an Eligible Telecommunications Carrier in Ohio. Application at 5. HCI, a Minnesota corporation, does not directly offer domestic telecommunications services but, through eight wholly-owned incumbent LECs, provides service to approximately 10,500 access lines in Minnesota, Nebraska, South Dakota, and Ohio. *Id.* These eight incumbent LECs are: Clara City Telephone Company, Sacred Heart Telephone Company, Fort Randall Telephone Company d/b/a Mt. Rushmore Telephone Company, Hanson Communications of Ohio, LLC, Starbuck Telephone Company, Telephone Service Company (TSC), The Middle Point Home Telephone Company, and Zumbrota Telephone Company. Application at Exh. C (Hanson Communications, Inc. ILEC Affiliate Chart); Supplement at 2 (providing the service area for each of HCI's wholly-owned incumbent LECs). Applicants state that neither HCI nor any of its affiliates holding at least a 10% or greater interest in HCI hold a 10% or greater interest in any other provider of telecommunications services. Supplement at 1. The following U.S. citizens hold a ten % or greater interest in HCI: Bruce Hanson (20.51%); Mark Hanson

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.

Domestic Section 214 Application Filed for the Transfer of Control of
Buckland Telephone Company to Hanson Communications, Inc.,
WC Docket No. 24-57, Public Notice, DA 24-314 (WCB 2024).

For further information, please contact Gregory Kwan, Competition Policy Division,
Wireline Competition Bureau (202) 418-1191.

-FCC-

(23.18%); and Susan Anderson (20.51%). Application at 4. Applicants note that there is an adjacency of service areas between Buckland's service area and HCI's affiliate, TSC. Application at 5; *id.* at Exh. B (Buckland Telephone Service Company Study Area Adjacency). 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, CCBPol 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).

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b), Table of FM	)	MB Docket No. 24-111
Allotments, FM Broadcast Stations.	)	RM-11980
(Canadian, Texas)	)	
	)	
Application for Construction Permit to Modify	)	File No. 0000220011
Station KPQP, Panhandle, Texas	)	Facility ID No. 189483
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: April 30, 2024**Released: May 1, 2024****Comment Date: June 24, 2024****Reply Comment Date: July 9, 2024**

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the Petition for Rulemaking (Petition) filed by Hispanic Target Media Inc. (Petitioner), proposing to amend the Table of FM Allotments, section 73.202(b) of the Commission's rules,¹ by substituting Channel 285C1 for vacant Channel 235C1 at Canadian, Texas. The Petition accommodates the above-captioned hybrid modification application (Application) for Station KPQP that proposes the substitution of Channel 235C3 for Channel 291C3 at Panhandle, Texas.²

II. BACKGROUND

2. Petitioner requests the substitution of Channel 285C1 for vacant Channel 235C1 at Canadian, Texas to facilitate the grant of its hybrid Application. Petitioner claims that the proposed Channel 235C3 substitution at Panhandle serves the public interest because it greatly enhances Station KPQP's service area from 28,674 persons to 145,397 persons, an increase of over 400 percent.³ Petitioner certifies that if Channel 285C1 is substituted for vacant Channel 235C1 at Canadian, it commits to construct and license the new facility for KPQP on Channel 235C3 at Panhandle upon issuance of the construction permit.

III. DISCUSSION

3. We find that the proposed substitution of Channel 285C1 for vacant Channel 235C1 at Canadian, Texas warrants consideration. A staff engineering analysis indicates that Channel 285C1 can be allotted to Canadian, Texas, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 6.1 km (3.8 miles) north of the community. The reference coordinates are 35-57-35 NL and 100-24-24 WL. Accordingly, we seek comment on the proposed

¹ 47 CFR § 73.202(b).

² See FCC Application File No. 0000220011 (Filed on March 27, 2024, as amended).

³ See Petition at 2.

amendment to the Table of FM Allotments, section 73.202(b) of the Commission's rules,⁴ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Canadian, Texas	235C1	285C1

IV. PROCEDURAL MATTERS

4. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.⁵

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

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.⁶
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the NPRM.⁷

6. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Commission's rules,⁸ 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).⁹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings/standard>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority

⁴ 47 CFR § 73.202(b).

⁵ 47 CFR § 1.420(d).

⁶ 47 CFR § 1.420(d).

⁷ 47 CFR § 1.420(g)(2).

⁸ 47 CFR §§ 1.415, 1.419, and 1.420.

⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); *recon. granted*, 13 FCC Rcd 21517 (1998).

Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Currently, the Commission does not accept any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.¹⁰

7. *Service.* Pursuant section 1.420 of the Rules,¹¹ all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.¹² Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Francisco San Milan
Hispanic Target Media Inc.
2433 E. Palo Verde Street
Yuma, AZ 85364

Gene Wisniewski
c/o Hispanic Target Media Inc.
1472 E 3100 S
Wendell, ID 83355

8. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.¹³ For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.¹⁴ An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.¹⁵ However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.¹⁶ Any comment that has not been served on the petitioner constitutes an *ex parte*

¹⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rd 2788 (2020).

¹¹ 47 CFR § 1.420.

¹² See 47 CFR § 1.420(a), (b) and (c).

¹³ 47 CFR §§ 1.1200 *et seq.*

¹⁴ 47 CFR § 1.1208.

¹⁵ 47 CFR § 1.1204(a)(10).

¹⁶ 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or
(continued....)

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

9. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.¹⁷ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

10. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<https://www.fcc.gov/ecfs/search/search-filings>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

11. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,¹⁸ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.¹⁹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁰ 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 2002.²¹

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

13. *Additional Information.* For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

¹⁷ See 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

¹⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹⁹ 47 CFR § 73.202(b).

²⁰ See 44 U.S.C. §§ 3501-3520.

²¹ See 44 U.S.C. § 3506(c)(4).

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

In the Matter of	)
	)
SAAB TRANSPONDERTECH	)
	)
Request for Waiver of Part 80 Rules to Permit	)
Equipment Authorization of the Saab R60 AIS	)
AtoN Station	)

ORDER

Adopted: April 30, 2024

Released: April 30, 2024

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. On December 13, 2022, Saab TransponderTech (Saab), filed an expedited request for waiver of the Commission's part 80 rules as necessary to permit a grant of equipment authorization to Saab's R60 Automatic Identification System (AIS) Aids to Navigation (AtoN) station (Saab Waiver Request).¹ For the reasons discussed below, we grant the Saab Waiver Request.

2. AIS is a maritime navigation safety communications system standardized by the International Telecommunication Union for use in collision avoidance and vessel monitoring and tracking.² It employs on-board transponders, electronic charts, Differential Global Positioning System technology, and a technique called Self-Organizing Time Division Multiple Access to provide a VHF ship-to-ship and ship-to-shore radio service in which vessels and designated shore stations broadcast a unique identifier, coupled with safety-related data on, for example, ship positions, routes, dimensions, and navigational status.³ An AtoN is "any device external to a vessel or aircraft intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation."⁴

3. Saab states that it has developed various types of AIS products for more than twenty years and has previously obtained Commission authorization for several of its AIS Class A systems.⁵ Recently, Saab developed an AIS AtoN station based on its "latest generation AIS hardware for fixed installations, R60."⁶ Specifically, the R60 AtoN station will transmit AIS messages showing the position of wind turbines within a vessel's range and will be installed either on shore or at a central location at an

¹ Waiver – Expedited Action Requested: Request for waiver of rules governing equipment authorization – Saab R60 AIS AtoN Station (filed Dec. 13, 2022) <https://www.fcc.gov/ecfs/document/121384853908/13> (Saab Waiver Request). Saab's supporting documentation is available on the Commission's Electronic Comment Filing System (ECFS), <https://www.fcc.gov/ecfs/search/search-filings/filing/121384853908> (last visited on Mar. 13, 2024).

² See *Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems et al.*, WT Docket No. 04-344, Memorandum Opinion and Order and Notice of Proposed Rule Making, 19 FCC Rcd 20071, 20074, para. 5 (WTB 2004).

³ *Id.*

⁴ See 33 CFR § 62.3(a).

⁵ Saab Waiver Request at 1.

⁶ *Id.*

offshore wind farm.⁷ Saab explains that it needs a waiver of the part 80 rules as a prerequisite to obtaining equipment authorization for its R60 AIS AtoN station because AIS AtoN equipment is not referenced in part 80.⁸

4. In support of the requested waiver, Saab notes, in pertinent part, that an accredited laboratory and certification body has confirmed that the R60 AIS AtoN station is in full compliance with the international AIS AtoN standard (International Electrotechnical Commission (IEC) 62320-2);⁹ and “has been selected as the preferred AIS AtoN equipment for several offshore windfarm projects outside the US East Coast”¹⁰ Saab further notes that the deployment of AIS AtoN technology at offshore windfarm projects will enhance maritime safety by transmitting AIS messages alerting nearby vessels of the position of individual wind turbines.¹¹

5. On January 10, 2024, the United States Coast Guard (USCG) issued Saab a Letter of Compliance, confirming that the R60 AIS AtoN meets the technical requirements of IEC 62320-2.¹²

6. Section 1.925(b)(3) of the Commission’s Rules provides that we may grant a waiver if it is shown that (i) the 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) in view of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ We conclude that Saab has demonstrated that the requested waiver is warranted under the first prong of the waiver standard. Specifically, we find that it is in the public interest to allow the use of these AIS AtoN devices to notify vessels of the location of wind turbines facilities, thereby increasing the safety of maritime vessels in furtherance of core purpose of the Commission’s part 80 rules.

7. Although the Commission’s part 80 rules currently do not provide for the authorization of AIS AtoN equipment, we find that authorizing this AIS AtoN serves the paramount goal of part 80 by promoting maritime safety through the use of radio technology.¹⁴ We find that granting the Saab Waiver Request would further rather than frustrate the purpose of the rules governing the equipment authorization process for marine radio equipment and would be in the public interest, allowing the well-recognized benefits of AIS technology to be integrated with AtoN functionality to better protect vessels from collisions with offshore wind turbines and other potential obstacles. We observe, in this regard, that the Wireless Telecommunications Bureau has previously granted waiver requests by manufacturers to permit the certification and use of AIS AtoNs.¹⁵ In addition, we attach substantial weight to the USCG’s

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ *Id.*; IEC 62320: Maritime navigation and radiocommunication equipment and systems – Automatic identification system (AIS) – Part 2: AIS AtoN Stations – Operational and performance requirements, methods of testing and required test results (Oct. 31, 2016), <https://webstore.iec.ch/publication/26139>.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² Letter from Commander F.A. Strom, Chief, U.S. Coast Guard, Office of Design and Engineering Standards, to Saab TransponderTech (Jan. 10, 2024) (on file in <https://www.fcc.gov/ecfs/document/1011259799778/1>).

¹³ 47 CFR § 1.925(b)(3).

¹⁴ See, e.g., *Iridium Communications, Inc., Petition for Waiver to Permit Use of Iridium Service to Meet GMDSS Requirements*, WT Docket No. 19-280, Order, 34 FCC Rcd 13029 (WTB 2019) (granting waiver of the part 80 rules to permit use of ship station equipment not recognized under part 80 because use of the equipment would promote maritime safety).

¹⁵ To date, there have been approximately 10 FCC approvals for AIS AtoN equipment. For example, Vesper Marine Ltd. (Vesper Marine) filed an expedited waiver request for its AIS AtoN in 2015. *Wireless Telecommunications Bureau Seeks Comment on Vesper Marine Ltd. Request for Waiver to Permit Certification and Use of Automatic* (continued....)

determination, in its Letter of Compliance, that the Saab R60 AIS AtoN station meets the technical requirements of IEC 62320-2.¹⁶

8. Saab submitted various documents in support of its waiver request, including specification sheets, technical and test reports, a Telecommunication Certification Body grant of equipment authorization (from TÜV SÜD BABT Unlimited (Fareham, United Kingdom)), photos, and spurious emission measurement results. We view this documentation as an integral component of the waiver request, and require that Saab submit these same documents along with a copy of this *Order* in any application to the FCC Lab for certification of its R60 AIS AtoN station.

9. Accordingly, **IT IS ORDERED** that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the Waiver Request filed by Saab TransponderTech on December 13, 2022, **IS GRANTED**.

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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge
Deputy Chief
Mobility Division
Wireless Telecommunications Bureau

Identification System Virtual Aid to Navigation, WT Docket No. 16-6, Public Notice, 31 FCC Rcd 73 (WTB 2016). The FCC granted Vesper Marine's request on May 10, 2016.

¹⁶ See *supra* note 13.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 24-412
Released: May 2, 2024

SPACE BUREAU SEEKS TO REFRESH THE RECORD ON PROPOSED RULES PERTAINING TO ORBITAL DEBRIS MITIGATION

IB Docket Nos. 18-313 and 22-271

Comments Due: [30 days after publication in the Federal Register]
Reply Comments Due: [45 days after publication in the Federal Register]

With this Public Notice, the Space Bureau seeks to refresh the record on rule changes pertaining to orbital debris mitigation previously proposed by the Commission. The Commission continues to seek to improve and clarify its rules taking into account the Commission's experience gained in the satellite licensing process, improvements in mitigation guidelines and practices, and in light of various market developments. The Commission sought comment in 2020 on various proposals for amending the Commission's orbital debris mitigation rules.¹ The comment period closed over three years ago.² To ensure that the Commission has the benefit of current information, including any developments relating to these issues since the release of the underlying *Further Notice of Proposed Rulemaking (FNPRM)*, we invite interested parties to update the record as discussed below.

Background. In 2020, the Commission adopted a *Report and Order* comprehensively updating its rules on orbital debris mitigation. At the same time, the Commission adopted an *FNPRM* which sought comment on additional rule amendments and proposals related to the probability of accidental explosions, collision risk for multi-satellite systems, maneuverability requirements, and casualty risk, among other issues.³ In the *2020 Order*, the Commission discussed the pace at which the industry is growing, noting that it expected that the regulation of orbital debris would be an iterative process as new research becomes available and new policies are developed based on experience and the evolving commercial space landscape.⁴

¹ *Orbital Debris in the New Space Age*, IB Docket No. 18-313, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020) (*2020 Order* or *2020 FNPRM*); see also *Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18-313, Order on Reconsideration, FCC-24-6 (Jan. 26, 2024) (affirming the *2020 Order*).

² See *2020 FNPRM*; see also Federal Communications Commission, Mitigation of Orbital Debris in the New Space Age, 85 Fed. Reg. 52455 (August 25, 2020) (announcing the comment period ending on October 9, 2020, and the reply comment period ending on November 9, 2020).

³ See, generally, *2020 FNPRM*, 35 FCC Rcd at 4226-49. On September 29, 2022, the Commission adopted a Second Report and Order addressing the post-mission disposal lifetime issues raised in the *FNPRM*, resulting in the adoption of a rule requiring satellite operators ending their mission in, or passing through low Earth orbit (LEO), to dispose of their satellites as soon as practicable, but no more than 5 years after the end of the mission. See *Space Innovation; Orbital Debris in the New Space Age*, IB Docket Nos. 18-313 and 22-271, Second Report and Order, 37 FCC Rcd 11818 (2022).

⁴ *2020 Order*, 35 FCC Rcd at 4166-67, para. 21.

Since the Commission last sought comment on its orbital debris mitigation rules, NASA and other standards-setting bodies have made a number of technical and policy updates to their orbital debris mitigation standards and guidance documents,⁵ and industry has gained substantial experience in this area, potentially leading to the development or refinement of new industry standards and practices in the future. In addition, in order to maintain U.S. leadership in the space economy, the Commission has opened a new docket for Space Innovation, IB Docket 22-271, recognizing that the new space age needs new rules, including for orbital debris mitigation, that reflect the expanding proliferation of satellites and innovations in the space industry.⁶ Finally, the Space Bureau's own experience in satellite licensing and addressing associated orbital debris concerns has also advanced and parties have provided additional views in specific licensing proceedings on approaches to debris mitigation, particularly for large constellations.⁷

Based on these considerations, the Space Bureau is providing an opportunity for additional comments in order to ensure an up-to-date record.

Request for Additional Comment. Accordingly, the Space Bureau invites stakeholders to update the record after reviewing the specific proposals, underlying analysis, and questions contained in the *FNPRM*, as well as the existing record in this proceeding. In particular, the *FNPRM* presented a number of questions and proposals regarding the debris mitigation practices for constellations, including specific considerations related to the total probability of collisions with large objects.

In this context, the Commission sought comment on whether it should analyze collision risks based on the entire system (system-wide, or in the aggregate) or on individual satellites (per-satellite) within a multi-satellite non-geostationary orbit (NGSO) system.⁸ If the Commission were to opt for a system-wide approach, it sought comment on the process through which such collision risks should be considered and what factors would be relevant in performing such an analysis.⁹ The Commission noted that if it adopted a system-wide safe harbor approach, systems that are able to demonstrate that they meet a system-wide collision probability metric (or another suitable risk indicator) would be considered as adequately addressing this aspect of debris mitigation, but systems that exceed the threshold would be subject to further review.¹⁰ The Commission sought comment on using the U.S. Orbital Debris Mitigation Standard Practices' (ODMSP) 0.001 probability of collision metric as a threshold or safe harbor as a means of identifying systems that may need further review.¹¹ The Commission sought comment on

⁵ See, e.g., NASA Spacecraft Conjunction Assessment and Collision Avoidance Best Practices Handbook, (Rev 1, updated February 2023), https://nodis3.gsfc.nasa.gov/OCE_docs/OCE_51.pdf; The Orbital Debris Interagency Working Group, Subcommittee on Space Weather, Security, and Hazards, of the National Science and Technology Council, *National Orbital Debris Implementation Plan* (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/07/07-2022-NATIONAL-ORBITAL-DEBRIS-IMPLEMENTATION-PLAN.pdf>. Additionally, many conferences, workshops, and working groups that published research and recommendations pertaining to orbital debris mitigation and space sustainability have been held, such as the Second International Orbital Debris Conference (IOC II) on Dec. 4-7, 2023, <https://www.hou.usra.edu/meetings/orbitaldebris2023/>.

⁶ See, e.g., Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing, Notice of Inquiry, IB Dockets 22-271 and 22-272, 37 FCC Rcd 10022 (2022) (Chairwoman Rosenworcel's statement).

⁷ See, e.g., *Exploration Holdings, LLC*, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System, Order and Authorization, 37 FCC Rcd 14882, 14924-25, paras. 84-85 (2022); *Kuiper Systems LLC*, Request for Modification of the Authorization for the Kuiper NGSO Satellite System, Order and Authorization, 38 FCC Rcd 1112, 1115-16, paras. 12-13 (2023). See also *Kuiper Systems LLC*, Request for Modification of the Authorization for the Kuiper NGSO Satellite System, Order and Authorization, ICFS File Nos. SAT-MOD-20230228-00043, SAT-AMD-20230613-00140, DA 24-224, paras. 15-18 (SB Mar. 8, 2024).

⁸ 2020 *FNPRM*, 35 FCC Rcd at 4226-27, paras. 155-157.

⁹ *Id.* at 4227, para. 157.

¹⁰ *Id.*

¹¹ *Id.* at 4226, para. 154, 4228-29, para. 159.

whether a safe harbor approach like the one described above or a bright-line rule would be preferable in this context and asked for specific metrics or thresholds that would be appropriate for each scenario.¹²

The Commission also identified several factors that could be relevant in establishing a safe harbor or bright-line rule, the maneuvering capabilities and reliability of the satellite(s), orbital lifetime, the number of satellites in the system (possibly including constellation replenishment rate¹³ and replacement satellites over some specific time period), and the size of individual satellites.¹⁴ The Commission sought comment on if these factors were relevant for consideration in this regard, how these factors should be evaluated, and whether there were any more factors that should be considered.¹⁵ As it pertains to large constellations, the Commission asked for input on whether it should make a bright-line distinction between large constellations and smaller systems in terms of the applicable metrics for collision risk assessment, or should it attempt to specify a scalable metric for both types of systems.¹⁶

We seek to refresh the record on these points. In particular, in several *ex parte* presentations, commenters addressed a possible metric of 100 “object-years” for assessing the risks that may arise if satellites fail to complete planned disposal.¹⁷ “Object-years” refers to the number of years each failed satellite would remain in orbit, summed across any other failed satellites that were part of the satellite system. We seek comment on this and other approaches for addressing the reliability of post mission disposal, especially for constellations. Is an object-years metric suitable for this type of analysis, and if so, what threshold should be applied?¹⁸ The Space Bureau has used a 100 object-years metric in some licenses as a trigger for cases in which disposal failures would warrant additional Commission review of the execution of debris mitigation measures, and we seek comment on whether this approach should be utilized more or less widely, and in which types of cases. Are there alternative approaches for identifying which systems may pose more collision risk than others? We ask for comment on such approaches, as well as any potential alternative metrics, methods for risk analysis, or implementation strategies for managing these collision risks, especially as it pertains to larger systems.¹⁹ Additionally, we seek comment on appropriate actions should an operator be granted a license and then exceed a 100 object-

¹² *Id.* at 4228-29, paras. 157-158.

¹³ The satellite replenishment rate refers to the rate at which new satellites are launched and deployed to replace aging or defunct satellites.

¹⁴ *Id.* at 4229, para. 158.

¹⁵ *Id.*

¹⁶ *Id.* Similarly, the *FNPRM* also asked whether the Commission should establish a separate process for evaluation of system-wide collision risk for satellites that operate in Medium Earth orbit (MEO), *i.e.* between 2,000 and 35,786 kilometers above the Earth. *Id.*

¹⁷ See, e.g., Letter from Darren McKnight, LeoLabs, to Karl A. Kensinger, Chief, Satellite Division, FCC, IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, IB Docket No. 18-313 (dated Mar. 29, 2022); *Ex Parte* Presentation of Astroscale U.S., ICFS File Nos. SAT-LOA-20200526-00055, SAT-AMD-20210818-00105, IB Docket 18-313 (filed Jan. 13, 2023); *Ex Parte* Presentation of Telesat LEO Inc., ICFS File Nos. SAT-MPL-2020526-00053, SAT-APL-20210104-00002, SAT-APL-20220616-00059, SAT-PPL-20211104-00138, IB Docket No. 18-313 (dated Apr. 28, 2023); *Ex Parte* Presentation of WorldVu Satellites Limited, ICFS File Nos. SAT-MPL-20220921-00115, SAT-MPL-20211104-00144, SAT-MPL-20220921-00116, IB Docket No. 18-313 (dated Apr. 7, 2023); *Ex Parte* Presentation of BlackSky, Hawkeye360, ICEYE US, Inc., Planet Labs PBC, Spire Global, Inc., Tomorrow.io, IB Docket No. 18-313 (filed Mar. 15, 2023); *Ex Parte* Presentation of Space Exploration Holdings, LLC, IB Docket No. 18-313 (filed Jun. 28, 2023).

¹⁸ We note that the ODMSP, in a somewhat different context, suggests a threshold of 100 object-years per spacecraft for all planned debris released in LEO that is larger than 5 mm. See ODMSP 1-1.

¹⁹ To the extent possible, we ask that commenters supporting or disagreeing with particular metrics provide analysis that includes sample constellation sizes, satellite area-to-mass ration, deployment altitudes, and other potentially relevant considerations.

year threshold, or any other metric that may be adopted. For example, should the operator be required to cease satellite deployment until the causes of the disposal failure have been identified and addressed sufficiently? If a cause and solution have been identified and successfully implemented, should the count of object years be re-set by removing object-years for those satellites from the operator's total object years? Are there other reporting conditions that could be used to address collision risks?

We recognize that many factors, including orbital altitude and maneuvering capabilities, may impact collision risk analyses. In the *FNPRM*, the Commission was specifically interested in understanding the role of maneuvering capabilities in mitigating collision risk and the extent to which their reliability should be factored into collision risk assessments. The Commission sought comment on how to evaluate the likelihood of individual satellite maneuvering failures within a multi-satellite system.²⁰ Additionally, the Commission requested input on how to assess the collision risk associated with failed satellites, including what the assumed location of the maneuvering failure should be (i.e., in the deployment orbit, the worst-case collision risk orbit, a combination of both, or a range of orbits representing the expected range and duration of satellite operations), and if there are any methods by which the Commission could apply historical data concerning the typical point in a satellite mission where failures occur in order to refine the analysis.²¹ The Commission requested comment on this approach and on other alternatives for assessing an expected failure rate on a more detailed basis.²² We request additional comment on these issues, especially how they relate to mitigating collision risks with large objects.

In the event a safe harbor approach is adopted, the Commission sought comment on the review process for systems that did not meet the established safe harbor criteria.²³ The Commission invited comment on options such as allowing applicants to demonstrate a lower actual failure rate for their maneuvering capabilities than the assumed rate used in the safe harbor assessment.²⁴ For larger systems with multiple deployments, the Commission also asked commenters to provide feedback on the possibility of implementing a license condition requiring the applicant to provide additional demonstrations if the actual failure rate for the initial deployments is substantially higher than the expected failure rate expressed in its application.²⁵

For NGSO systems that could not meet the safe harbor, if adopted, the Commission also sought comment on other aspects of a more detailed review process, such as asking operators to provide additional detail on alternative satellite designs that were considered during development or additional measures that will be taken to reduce the total collision risk.²⁶ To this end, the Commission sought input on what additional measures may correlate with lower risk and if there were specific measures that can be specified with a goal of minimizing the need for a case-by-case approach.²⁷

We encourage interested parties to submit new or additional relevant information related to these and other questions laid out in the *FNPRM*, as well as information about the present state of the orbital debris environment and the satellite industry at large, including the types of mission profiles or additional considerations that may have arisen with more prominence since the *FNPRM* was first adopted. We recognize that the satellite industry is rapidly evolving and that issues or concerns may have arisen that

²⁰ 2020 *FNPRM*, 35 FCC Rcd at 4229-30, para. 160.

²¹ *Id.*

²² *Id.* at 4229-30, paras. 160-61.

²³ *Id.* at 4230, para. 161.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4231, para. 162.

²⁷ *Id.*

were not expressly considered at the time the *FNPRM* was adopted, or that stakeholders now feel have otherwise rendered some of the initial considerations and proposals in the *FNPRM* obsolete or infeasible. Accordingly, we invite interested parties to provide additional specific recommendations or alternative proposals, supported by relevant experience and source material that may not have been available prior to this public notice, as it pertains to the issues raised here and presented in the *FNPRM*.

Regulatory Flexibility Analysis. The *FNPRM* included an Initial Regulatory Flexibility Analysis (“IRFA”) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.²⁸ We invite parties to file supplemental comments on the IRFA in light of this request to refresh the record.

Ex Parte Rules. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.²⁹ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the 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.

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.

²⁸ *Id.* at 4250, para. 209, 4280-85, Appendix E.

²⁹ *See id.* at 4249, para. 206; 47 CFR § 1.1200 *et seq.*

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

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

Additional Information. For additional information, contact Alexandra Horn, alexandra.horn@fcc.gov, Space Bureau, Satellite Programs and Policy Division.

– 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 24-413
Released: May 1, 2024

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

WC Docket No(s). 24-122

Comments Due: May 16, 2024

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.¹ The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,² and section 63.71 of the Commission's rules,³ to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **June 1, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the

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 "domestic, non-dominant carrier, or any carrier meeting the requirements of paragraph (f)(2)(ii) of this section, 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)(ii) (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 only if: The applicant: (A) Offers a stand-alone interconnected VoIP service, as defined in § 9.3 of this chapter, throughout the affected service area, and (B) At least one other alternative stand-alone facilities-based wireline or wireless voice service is available from another unaffiliated provider throughout the affected service area.").

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 **May 16, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁶ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁷ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

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).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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

– FCC –

Appendix

- 1) **Applicant(s): Consolidated Communications of Texas Company d/b/a Consolidated Communications (Consolidated Communications)**
WC Docket No. 24-122, Comp. Pol. File No. 1905
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-122*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-122*%22)))
Affected Service(s) – legacy voice and/or digital subscriber line/data telecommunications services provided over certain copper loop plant
Service Area(s) – Conroe; and Cut and Shoot, Texas
Authorized Date(s) – on or after June 1, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On April 16, 2024, Consolidated Communications filed an application seeking authority for the emergency discontinuance of services pursuant to section 63.63 of the Commission’s rules. On May 1, 2024, Consolidated Communications filed a letter to withdraw the April 16, 2024 filing and replace it with the present application.”



Federal Communications Commission
Washington, D.C. 20554

May 2, 2024

DA 24-414

In Reply Refer to:

1800B3-ARR

Released: May 2, 2024

Tacoma Hilltop Foundation
c/o Donald Brown
P.O. Box 111747
Tacoma, WA 98411
HilltopFoundation@outlook.com

Re: **Tacoma Hilltop Foundation**
New LPFM, Tacoma, Washington
Facility ID No. 788049
Application File No. 0000231685

Petition for Reconsideration

Dear Applicant:

We have before us a Petition for Reconsideration (Petition)¹ filed by Tacoma Hilltop Foundation (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Tacoma, Washington.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.³ On January 22, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in (1) section 73.807(a)⁴ of the Commission's rules (Rules), with respect to the second-adjacent channel license of station KNKX(FM), Tacoma, Washington, and (2) section 73.825⁵ of the Rules, with respect to low power TV Channel 6 station KYMU-LD, Seattle, Washington. The staff also noted that an amendment was not permitted under section 73.870(c) of the Rules.⁶

¹ Pleading File No. 0000239023 (filed Feb. 14, 2024).

² Application File No. 0000231685 (filed Dec. 6, 2023).

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

⁴ See 47 CFR § 73.807(a).

⁵ See 47 CFR § 73.825.

⁶ See *Broadcast Actions*, Public Notice, Report No. PN-2-240122-01 (MB Jan. 22, 2024) (citing 47 CFR § 73.870(c)). See also Application File Nos. BLED-20080715ADJ and 0000081648 (license applications for KNKX(FM) and KYMU-LD). On January 5, 2024, Petitioner attempted to file an amendment to the Application.

In the Petition, Petitioner seeks reinstatement of the Application and claims that it believed the Commission's Licensing and Management System automatically took into account second-adjacent channel stations and low power TV station licenses when determining the power of its proposed LPFM station and adjusted its proposed station's parameters based on any short-spacings. Petitioner thus assumed no second-adjacent channel waiver request or TV Channel 6 agreement was required.⁷

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁸ Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 and 73.825 Violations. Bureau staff correctly dismissed the Application for failure to meet (1) the section 73.807(a)⁹ second-adjacent channel spacing requirements and (2) the section 73.825 channel spacing requirements with respect to low power TV stations authorized on Channel 6.¹⁰ Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.¹¹ LPFM applicants for Channels 201 to 220 must also protect and satisfy the minimum separation distances with respect to full power TV Channel 6 stations, and low power TV, TV translator, and Class A TV stations authorized on TV Channel 6, unless accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 station concurring with the proposed LPFM facilities.¹² Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.¹³ Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."¹⁴

The Bureau denied this amendment on January 8, 2024, because it was impermissibly filed during a filing freeze on amendments to applications submitted in the 2023 LPFM Filing Window. *See Media Bureau Announces Close of LPFM New Station Filing Window and Temporary Filing Freeze on Amendments to Applications Submitted in the December 2023 Filing Window*, Public Notice, DA 23-1165 (MB Dec. 15, 2023) (announcing filing freeze on amendments until January 31, 2024).

⁷ Petition at 1. Although Petitioner refers to a waiver of section 73.825, as discussed below, applicants that do not meet the spacing requirements of section 73.825 may file an agreement with the affected TV Channel 6 station concurring with the proposed LPFM facilities.

⁸ *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

⁹ 47 CFR § 73.807(a).

¹⁰ 47 CFR § 73.825.

¹¹ *See id.* § 73.807(a)(1).

¹² 47 CFR § 73.825(a).

¹³ *See id.* § 73.870(c).

¹⁴ *See Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR § 73.870(c)); *see also Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

Although section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorizes the Commission to waive second-adjacent channel spacing requirements, an LPFM applicant must specifically request the waiver and demonstrate that its proposed LPFM facilities “will not result in interference to any authorized radio service.”¹⁵ The Bureau explicitly cautioned LPFM applicants that it will dismiss any application that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, supported by the requisite engineering exhibit, and that a dismissed applicant will *not* be permitted to seek *nunc pro tunc* reinstatement of its application.¹⁶

Here, the Bureau correctly dismissed the Application because Petitioner failed to meet the minimum distance spacing requirements of section 73.807(a)(1) with respect to second-adjacent channel station KNKX(FM), and failed to submit a second-adjacent channel waiver request and supporting exhibit. Petitioner also failed to meet the minimum distance spacing requirements of section 73.825 with respect to low power TV station KYMU-LD, and the Application lacked a written agreement with station KYMU-LD. The Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.¹⁷ Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission’s dismissal of their applications would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote and be unfair to the many applicants who fully complied with the rules and filing requirements. It is, therefore, contrary to the public interest.¹⁸ Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Failure to File Second-Adjacent Waiver and Channel 6 Agreement. Finally, we reject Petitioner’s claim that it was unaware it was required to file a request for a second-adjacent channel waiver or a TV Channel 6 agreement. Applicants are required to comply with the Commission’s rules and procedures, which were clearly outlined by the *Procedures Public Notice*.¹⁹

¹⁵ Pub. L. No. 111-371, 124 Stat. 4072 (2011); *see also* 47 CFR § 73.807(e) (outlining LPFM applicant requirements for a second-adjacent channel spacing waiver).

¹⁶ *See Procedures Public Notice* at 4; *see also Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (*Clifford Brown*) (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)).

¹⁷ *See Christian Charities*, 30 FCC Rcd at 10549, para. 5 (2015) (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014); *Clifford Brown*, 29 FCC Rcd 13258).

¹⁸ *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) (“In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.”).

¹⁹ *See Procedures Public Notice* at 3 (explaining that an application that fails to comply with the second-adjacent channel spacing requirements, without requesting a waiver, will be dismissed with no opportunity to amend, and requiring applications for Channels 201 to 220 to meet TV Channel 6 spacing requirements); *see also Marketing Strategy Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not ‘claim ignorance of the law as a defense’” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Tacoma Hilltop Foundation, on February 14, 2024 (Pleading File No. 0000239023) **IS DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

(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”).



Federal Communications Commission
Washington, D.C. 20554

May 3, 2024

DA 24-415

SMALL ENTITY COMPLIANCE GUIDE

**Updating References to Standards
Related to the Commission's Equipment Authorization Program**

FCC 23-14

**ET Docket No. 21-363
Released March 14, 2023**

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

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide 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, 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**

TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS	2
	A. American National Standard Validation Methods for Radiated Emission Test Sites (1 GHz to 18 GHz (ANSI C63.25.1-2018)), Sections 2.910 and 2.948	2
	B. American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices (ANSI C63.10-2020), Sections 2.910, 2.950, 15.31, and 15.38.....	3
	C. General Requirements for the Competence of Testing and Calibration Laboratories (ISO/IEC 17025:2017(E)), Sections 2.910, 2.948, 2.949, 2.962, and 68.62	3
	D. American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment (Range of 9 kHz to 40 GHz), Amendment 1: Test Site Validation (ANSI C63.4a-2017), Sections 2.910 and 2.948.....	4
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	4
IV.	IMPLEMENTATION DATE	4
V.	INTERNET LINKS	4

I. OBJECTIVES OF THE PROCEEDING

Through its equipment authorization program, the Commission ensures the radiofrequency (RF) devices people rely on daily, such as cell phones and Wi-Fi devices, operate effectively without causing harmful interference and otherwise comply with the Commission's rules. Equipment authorization program procedures are codified in the Code of Federal Regulations (CFR) in part 2 of the rules.¹ Part 2 of the Commission's rules provide two different approval procedures for RF devices subject to equipment authorization—certification and Supplier's Declaration of Conformity (SDoC).² While both processes involve laboratory testing to demonstrate compliance with Commission requirements, testing associated with certification must be performed by an FCC-recognized accredited testing laboratory.³

On March 10, 2023, the Commission updated its equipment authorization program rules to incorporate by reference⁴ four new and updated industry standards that are integral to equipment testing.⁵ The Commission's rules are routinely updated to reflect significant developments in the standards-setting community. In doing so, the Commission ensures the equipment authorization program relies on the latest industry standards, thus providing the public with confidence that today's advanced devices are in compliance with the Commission's technical rules.

In the *Report and Order*, the Commission incorporated by reference:⁶ (1) the American National Standards Institute (ANSI) C63.25.1-2018 standard in sections 2.910 and 2.948 that consolidates guidance from existing standards to provide test site validation procedures from 1 GHz to 18 GHz; (2) the ANSI C63.10-2020 standard in sections 2.910, 2.950, 15.31, and 15.38 updates a previously incorporated by reference standard and addresses compliance testing procedures for unlicensed wireless transmitters;

¹ See 47 CFR pt. 2, subpt. J.

² 47 CFR § 2.901. Certification is a more rigorous approval process for RF devices with the greatest potential to cause harmful interference to other radio operations. A grant of certification is an equipment authorization issued by an FCC-recognized telecommunications certification body (TCB) based on an evaluation of the supporting documentation and test data submitted to the TCB. 47 CFR § 2.907. SDoC allows a device to be marketed on the basis of testing performed in accordance with a Commission-approved methodology by the manufacturer, assembler, importer, or seller itself without the need to submit an application to a TCB. 47 CFR § 2.906.

³ 47 CFR § 2.948(a).

⁴ Incorporation by reference (IBR) is the process that federal agencies use when referring to materials published elsewhere to give those materials the same force and effect of law in the Code of Federal Regulations (CFR) as if the materials' text had actually been published in the Federal Register. By using IBR, the Commission is able to give effect to technical instructions, testing methodologies, and other process documents that are developed and owned by standards development organizations. Referencing these documents in the Commission's rules in accordance with guidelines the Office of the Federal Register established substantially reduces the volume of material that the Commission otherwise would have to publish in the Federal Register and the CFR. Once the Commission has completed any necessary notice-and-comment rulemaking proceedings and determined based on the record that any standards the Commission adopts are sound and appropriate, the Commission need only update the references to the standards in its rules. See *Updating References to Standards Related to the Commission's Equipment Authorization Program*, ET Docket No. 21-363, Report and Order, FCC-23-14, para. 6 & n.19 (Mar. 14, 2023) (*Report and Order*).

⁵ *Report and Order*.

⁶ Incorporating external standards within the Commission's rules has been a longstanding practice that reflects the Commission's desire, where appropriate and consistent with the Administrative Procedure Act and other statutes, to harmonize the rules with international standards and aligns the Commission's rules with general federal agency guidance which urges government agencies to use industry-developed standards rather than develop their own. See, e.g., *Procedure for measuring electromagnetic emissions from digital devices*, GEN Docket No. 89-44, Further Notice of Proposed Rule Making, 6 FCC Rcd 600, 601, paras. 7-8 (1991); see also OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (updated Jan. 27, 2016), available at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>.

(3) the ISO/IEC 17025:2017(E) standard in sections 2.910, 2.948, 2.949, 2.962, and 68.62 updates a previously incorporated by reference standard and replaces certain prescriptive requirements with performance-based requirements for test laboratory accreditation; and (4) the ANSI C63.4a-2017 standard in sections 2.910 and 2.948 provides additional options for the normalized site attenuation procedures associated with validating radiated test sites for use in the 30 MHz to 1 GHz frequency range.

The actions taken in the *Report and Order* further the Commission's goals of harmonizing its rules with international and industry standards by using technical instructions, testing methodologies, and other process documents from standards development organizations. Further, incorporation by reference substantially reduces the volume of material that the Commission otherwise would have to publish in the *Federal Register* and the Code of Federal Regulations (CFR). Section 2.910 of the Commission's rules describes the incorporation by reference of these standards, including information on how interested parties can inspect and obtain copies of the relevant materials. Parties interested in accessing standards documents may do so in various ways. The Commission, per its long-standing practice, has ensured that materials are available for in-person inspection.⁷ Each of the relevant standards has remained available throughout the rulemaking proceeding and the standards are available in a read-only format or for purchase through the standards development organizations. In addition, the National Archives and Records Administration Office of the Federal Register (NARA OFR) makes legal record copies of all standards that have been incorporated by reference "available for public inspection and limited photocopying."⁸

In addition to continued opportunities to purchase copies through the standards development organizations and other online sources, each of the standards is available to the public through the on-line reading rooms that the standards bodies maintain. The Commission concludes that the materials incorporated by reference are reasonably available to the class of person affected, consistent with 5 U.S.C. § 552(a) and the policies and procedures under 1 CFR part 51.⁹

II. COMPLIANCE REQUIREMENTS

A. American National Standard Validation Methods for Radiated Emission Test Sites (1 GHz to 18 GHz (ANSI C63.25.1-2018)), sections 2.910 and 2.948 *Final Rule*, 88 Fed. Reg at 67111

- The C63.25.1-2018 standard combines guidance from the C63.4-2014 standard and introduces the option of using a new effective test validation method called time domain site validation (TDSV).
- Procedures previously described in section 2.948(d) of the Commission's rules, such as the CISPR 16 method known as the site voltage standing wave ratio (SVSWR), will still

⁷ See National Archives and Records Administration Office of the Federal Register (NARA OFR), *Code of Federal Regulations Incorporation by Reference*, <https://www.archives.gov/federal-register/cfr/ibr-locations.html> (last visited May 2, 2023). The Commission also notes that in the summary of the *Report and Order* (R&O) published in the Federal Register, the Commission provided sources through which interested persons could obtain copies of the relevant standards and stated that a copy of each standard would be available for inspection at the FCC's main office. See *Updating References to Standards Related to the Commission's Equipment Authorization Program*, 88 Fed. Reg. 67108 (Sep. 29, 2023) (*Final Rule*).

⁸ See *Final Rule*, 88 Fed. Reg at 67109.

⁹ The Commission's means of accessing the actual text of the standards was provided in addition to the statement of the substance of the proposed rule and description of the subjects and issues in the *NPRM*, which was provided consistent with 5 U.S.C. § 553(b)(3). See *generally Report And Order*, "Discussion" section.

be allowed for test site validation of radiated emission measurements from 1 GHz to 18 GHz.

- There is no transition period for the use of this standard because it includes the test site validation option in the existing C63.4-2014 standard.
- Compliance with this requirement is effective October 30, 2023.

B. American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices (ANSI C63.10-2020), sections 2.910, 2.950, 15.31, and 15.38 *Final Rule*, 88 Fed. Reg at 67112

- The C63.10-2020 standard replaces the C63.10-2013 standard and any existing related references and provides new and updated methods that address advancements in compliance testing for a wide variety of unlicensed wireless transmitters, such as remote control and security unlicensed wireless devices, frequency hopping and direct sequence spread spectrum devices, anti-pilferage devices, cordless telephones, medical unlicensed wireless devices, Unlicensed National Information Infrastructure (U-NII) devices, intrusion detectors, unlicensed wireless devices operating on frequencies below 30 MHz, automatic vehicle identification systems, and other unlicensed wireless devices authorized by a radio regulatory authority.
- C63.10-2020 is a North American standard that accommodates Canadian and U.S. regulations.

Either ANSI C63.10-2013 or ANSI C63.10-2020 will be permitted until October 30, 2025; after this date only ANSI C63.10-2020 is permitted.

C. General Requirements for the Competence of Testing and Calibration Laboratories (ISO/IEC 17025:2017(E)), Sections 2.910, 2.948, 2.949, 2.962, and 68.62 *Final Rule*, 88 Fed. Reg at 67112

- 17025:2017(E) is a new version of the test laboratory accreditation standard previously referenced in our rules.
- The entire standard is incorporated by reference, including Clause 8.1 - Option A and Option B for greater flexibility.
- Option B allows laboratories to operate a quality management system that conforms to a certain standard from the International Organization for Standardization (i.e., ISO 9001) and Option A of ISO/IEC 17025:2017 incorporates relevant requirements of that same standard. Option A is more commonly used but Option B is available because some organizations have implemented an ISO 9001 system and would not need to take additional actions to demonstrate compliance.
- Either ISO/IEC 17025:2005(E) or ISO/IEC 17025:2017(E) will be permitted until October 30, 2025; after this date only ISO/IEC 17025:2017(E) is permitted.

D. American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment (Range of 9 kHz to 40 GHz), Amendment 1: Test Site Validation (ANSI C63.4a-2017), Sections 2.910 and 2.948 *Final Rule*, 88 Fed. Reg at 67113

- When the measurement method used requires the testing of radiated emissions on a validated test site, the site attenuation must comply with either: the requirements of ANSI C63.4a-2017 or the requirements of sections 5.4.4 through 5.5 of the following procedure: ANSI C63.4–2014.
- Measurement facilities used to make radiated emission measurements from 30 MHz to 1 GHz must comply with the site validation requirements in either ANSI C63.4a-2017 or ANSI C63.4–2014 (clause 5.4.4).
- There is no transition period for the use of the updated C63.4a-2017 standard because the updated rules permit continued use of the existing C63.4-2014 standard.
- Compliance with this requirement is effective October 30, 2023.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission’s actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules adopted in the *Report and Order* became effective October 30, 2023.

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

<https://www.fcc.gov/document/fcc-updates-equipment-authorization-standards>,
[FCC-23-14A1.docx](#), [FCC-23-14A1.pdf](#), [FCC-23-14A1.txt](#).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-416

Released: May 2, 2024

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU AND OFFICE OF
ENGINEERING AND TECHNOLOGY SUBMIT REQUEST FOR INFORMATION TO
FEDERAL PARTNERS ON CERTAIN MEASUREMENT FACILITIES (TEST LABS)
WITH APPARENT TIES TO GOVERNMENT OF PEOPLE'S REPUBLIC OF CHINA**

ET Docket No. 24-136

On May 2, 2024, the Federal Communications Commission's (FCC) Public Safety and Homeland Security Bureau and Office of Engineering and Technology submitted a request for information (RFI) to nine federal partners on certain measurement facilities (test labs) with apparent ties to the Government of the People's Republic of China.

In the public draft of the *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program* (ET Docket No. 24-136), which is to be considered by the Commission at its May 23rd meeting, the FCC seeks comment on, among other things, whether the Commission should prohibit participation in the Commission's equipment authorization program of entities that are subject to the exploitation, influence, or control by the government of a "foreign adversary" country on the Department of Commerce's "foreign adversaries" list,¹ such as a state-owned enterprise, or entities with ownership interests by municipal, state or other governmental entity within a foreign adversary country.²

As part of ongoing efforts by the FCC to protect our nation's communications networks, the RFI will inform the FCC's review of certain test labs. These test labs gather radiofrequency measurement data and develop technical reports concerning equipment that entities submit for FCC authorization for compliance with applicable technical rules. Recipients of the RFI include principals from the Bureau of Industry Security of the Department of Commerce, Cybersecurity & Infrastructure Security Agency, Department of Defense, Department of Justice, Federal Acquisition Security Council, Federal Bureau of Investigation, Department of Homeland Security, National Counterintelligence and Security Center of the Office of Director of National Intelligence, and National Security Agency. The RFI seeks responses by May 16, 2024.

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

¹ See 15 CFR §§ 7.2, 7.4. These provisions were promulgated pursuant to Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain." See Exec. Order No. 13873, 84 Fed. Reg. 22689 (May 15, 2019), <https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain>.

² See *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program*, Notice of Proposed Rulemaking, (ET Docket No. 24-136), para. 33.



Federal Communications Commission
Washington, DC 20554

May 3, 2024

DA 24-417

SMALL ENTITY COMPLIANCE GUIDE

**Unlicensed Use of the 6 GHz Band
Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz**

**FCC 23-86
ET Docket No. 18-295
GN Docket No. 17-183
Released November 1, 2023**

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

In any civil or administrative action against a small entity for a violation of rules, the content of 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 proceeding 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. Direct your comments, recommendations, or request 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**

TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS.....	1
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	2
IV.	IMPLEMENTATION DATE	2
V.	INTERNET LINKS	2

I. OBJECTIVES OF THE PROCEEDING

In the *Second Report and Order* in FCC 23-86, ET Docket No. 18-295 and GN Docket No. 17-183, adopted in October 2023,¹ the Commission revised part 15 of its rules to permit new very low power (VLP) unlicensed devices to use two portions of the 5.925-7.125 GHz (6 GHz) band. This decision expanded on the Commission's prior decision to permit unlicensed device use in the 6 GHz band. VLP devices are unlicensed, intended to be portable, may operate indoors and outdoors, will operate only in two portions of the 6 GHz band, and do not need to be under the control of a frequency coordination system. VLP devices should prioritize use of frequencies between 6.105 and 7.125 GHz prior to using frequencies between 5.925 GHz and 6.105 GHz.

II. COMPLIANCE REQUIREMENTS

In the 6 GHz band, VLP devices are regulated under subpart E of part 15 of the Commission's rules.² Part 15 of the FCC rules contains the technical requirements for radio frequency (RF) devices that may be operated without an individual license. All part 15 devices are required to accept harmful interference from other authorized operations, and are prohibited from causing harmful interference to other authorized operations.³ Specifically, VLP devices must meet the following requirements:

1. VLP devices may operate with up to -5dBm/MHz Effective Isotropic Radiated Power (EIRP) Power Spectral Density (PSD) and 14 dBm EIRP across the U-NII-5 and U-NII-7 portions of the 6 GHz band.
2. VLP devices may not be attached to outdoor infrastructure, such as poles or buildings, that would make any instances of potential interference more than fleeting.
3. VLP devices must employ a transmit power control mechanism that has the capability to operate at least 6 dB below the -5dBm/MHz EIRP PSD level permitted for VLP devices.
4. VLP devices must include a contention-based protocol which will act to avoid operating on channels on which incumbent systems are actively transmitting.
5. The power spectral density of VLP devices must be suppressed by 20 dB at one megahertz outside of an unlicensed device's channel edge, suppressed by 28 dB at one channel bandwidth from an unlicensed device's channel center, and suppressed by 40 dB at one-half times the channel bandwidth away from an unlicensed device's channel center. This is the same transmission emission mask that applies to low-power indoor and standard power unlicensed devices that are also permitted to operate in the 6 GHz band adopted in the *6 GHz Order*.⁴
6. VLP devices are limited to -27 dBm/MHz EIRP at frequencies below the bottom of the U-NII-5 band (5.925 GHz) and above the upper edge of the U-NII-8 band (7.125 GHz). These emissions limits at the edge of the U-NII-5 and U-NII-8 bands for VLP devices are identical to the emissions limits that apply to low-power indoor and standard power unlicensed devices adopted in the *6 GHz Order*.⁵

¹ *Unlicensed Use of the 6 GHz Band*; ET Docket No. 18-295, Second Report and Order, Second Memorandum Opinion and Order, and Memorandum Opinion and Order on Remand, FCC 23-86 (adopted October 19, 2023).

² 47 CFR pt. 15 subpart E.

³ 47 CFR § 15.5(b).

⁴ *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852, 3924-25, para. 196 (2020) (*6 GHz Order*).

⁵ 47 CFR § 15.407(b)(6); *6 GHz Order*, 35 Rcd at 3925, para. 197.

7. 6 GHz VLP transmitters must be approved under the FCC's certification procedure. This procedure requires that the equipment be tested by an accredited laboratory and approved by a designated Telecommunication Certification Body (TCB) to ensure that the equipment complies with all adopted controls.
8. Use of VLP devices is prohibited on low flying aircraft or unmanned aircraft (10,000 feet and below).
9. The use of VLP devices is prohibited on oil platforms.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Second Report and Order* do not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

All rule changes in the *Second Report and Order* are effective as of March 8, 2024.

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at:

<https://docs.fcc.gov/public/attachments/FCC-23-86A1.pdf>.

A copy of the Federal Register Summary of the *Report and Order* is available at:

<https://www.govinfo.gov/content/pkg/FR-2024-01-08/pdf/2023-28006.pdf>.

The FCC maintains a web-based system that is used to submit inquiries to its Laboratory, as well as to search for previous rule interpretations and frequently asked questions. This system, called the OET Knowledge Database (KDB), can be accessed at [OET Knowledge Database \(KDB\) \(fcc.gov\)](https://www.fcc.gov/oet/kdb).



Federal Communications Commission
Washington, D.C. 20554

May 3, 2024

DA 24-418

SMALL ENTITY COMPLIANCE GUIDE

Implementation of the Low Power Protection Act

FCC 23-112

MB Docket No. 23-126

Released December 12, 2023

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

In any civil or administrative action against a small entity for a violation of rules, the content of 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. Direct your comments, recommendations, or request 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

TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS	1
	A. Application Period	1
	B. Eligibility Requirements	1
	C. Interference Requirements	2
	D. Designated Market Area	2
	E. License Standards (Ongoing Eligibility Requirements)	2
	F. Application Process	3
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	3
IV.	IMPLEMENTATION DATE	3
V.	INTERNET LINKS	4

I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order (Order)* in MB Docket No. 23-126,¹ the Commission adopted rules to implement the Low Power Protection Act (LPPA),² which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations. The Order establishes the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, as well as the process for submitting applications and furthers the Commission's goals of implementing the LPPA without placing significant additional costs and burdens on small entities.

II. COMPLIANCE REQUIREMENTS

The *Order* implements the LPPA through the adoption of section 73.6030 in part 73 of Title 47 of the U.S. Code of Federal Regulations.³ Key areas of importance are as follows:

A. Application Period (47 CFR § 73.6030(c))

Consistent with the language of the LPPA, the Order gives LPTV stations a period of one year to apply for a Class A license. Once the Office of Management and Budget (OMB) has approved the application form and certain rules adopted in the Order,⁴ the Media Bureau will issue a public notice announcing when the one-year filing window will open. The application window will be limited to the one-year application window specified in the LPPA, but the Commission will examine, on a case-by-case basis, a potential applicant's claim that it was unable to file an application by the deadline due to circumstances beyond its control.

B. Eligibility Requirements (47 CFR § 73.6030(b))

The Order provides that the Commission "may approve" an application submitted by an LPTV station to convert to Class A status pursuant to the LPPA if the station meets the following eligibility criteria:

- During the 90-day period preceding the date of enactment of the LPPA (i.e., between October 7, 2022 and January 5, 2023), the LPTV station met the following requirements: (1) the station must have broadcast a minimum of 18 hours per day; (2) the station must have broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group; and (3) the station must have been in compliance with the Commission's requirements applicable to LPTV stations;
- The station demonstrates that it will comply with the interference requirements applicable to existing Class A stations (those that converted to Class A status pursuant to the 1999 Community Broadcasters Protection Act (CBPA)); and
- As of January 5, 2023, the station operated in a Designated Market Area (DMA) with not more than 95,000 television households.
- The Commission will allow deviation from these criteria only where deviations are

¹ *Implementation of the Low Power Protection Act*; MB Docket No. 23-126, Report and Order, FCC 23-35, rel. Dec. 12, 2023) (*Report and Order*).

² Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA).

³ 47 CFR § 73.6030.

⁴ *Id.* § 73.6030(c) and 73.6030(d).

insignificant or where there are such compelling circumstances that equity requires a deviation. Additionally, the Order notes that television translator stations are unlikely to satisfy the eligibility requirements of the LPPA.

Finally, beginning on the date of its application for a Class A license and thereafter, a station applying to convert to Class A status pursuant to the LPPA must be in compliance with the Commission's operating rules for full-power stations. The Commission's rules will apply to small and other applicants for Class A status under the LPPA, and to stations that are awarded Class A licenses under that statute, all Part 73 regulations except for those that cannot apply for technical or other reasons. For example, Class A stations must comply with the requirements for informational and educational children's programming, the political programming and political file rules, and the public inspection file rule. The Order also requires that stations that convert to Class A status pursuant to the LPPA, comply with all rules applicable to existing Class A stations, including interference requirements, and to continue to comply with the operational and programming requirements for eligibility for Class A status under the statute.

C. Interference Requirements (47 CFR § 73.6030(b)(6))

The Order provides that LPTV stations that convert to Class A status pursuant to the LPPA must comply with the interference rules applicable to existing Class A stations (those that converted to Class A status pursuant to the CBPA).

D. Designated Market Area (47 CFR § 73.6030(a)(b)(e))

Consistent with the language of the LPPA, the Order requires that an LPTV station seeking to convert to Class A status demonstrate that, as of January 5, 2023, the station operates in a Designated Market Area with not more than 95,000 television households. In the Order, the Commission further concluded that the term "operates" means that the LPTV station applying for Class A status under the LPPA must demonstrate that its transmission facilities, which include the structure on which its antenna is mounted, are located within the qualifying DMA. Additionally, the Order further states that the Commission will use the Nielsen Local TV Report in determining the DMA where the LPTV station's transmission facilities were located as of January 5, 2023. To make the necessary demonstration, the Commission will require applicants to provide the following information as it existed on January 5, 2023: (1) the coordinates of the station's transmission facilities (i.e., the structure on which its antenna is mounted); (2) the city/town/village/or other municipality and county in which the transmission facilities are located; and (3) the qualifying DMA in which the station's transmission facilities are located.

E. License Standards (Ongoing Eligibility Requirements) (47 CFR § 73.6030(e))

The LPPA requires that a station that converts to Class A status pursuant to the statute continue to meet the eligibility requirements of the LPPA during the term of the station's Class A license. In addition, the *Order* requires stations that convert to Class A status to remain in DMAs with not more than 95,000 television households in order to maintain their Class A status except for situations in which the population in the station's DMA later exceeds the threshold amount through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. LPPA Class A stations will not be permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status.

In addition, the *Report and Order* also requires that stations that convert to Class A status pursuant to the LPPA comply with all rules applicable to existing Class A stations, including interference requirements. Stations that convert to Class A status pursuant to the LPPA must continue to meet the minimum operating requirements for Class A stations. Licensees unable to continue to meet the

minimum operating requirements for Class A television stations, or that elect to revert to low power television status, must promptly notify the Commission, in writing, and request a change in status.

F. Application Process (47 CFR § 73.6030(c)(d)(f))

The Order provides that applications to convert to Class A status will be limited to the conversion of existing LPTV facilities as they exist at the time of application, without consideration of any pending modifications to those facilities or unbuilt construction permits. Further, the Order requires that applications for modification of an LPTV station's existing license to convert to Class A status pursuant to the LPPA must be filed using FCC Form 2100, Schedule F. Such applications must be filed electronically and must include the required \$425 filing fee. In addition, applicants must provide local public notice of the application pursuant to the Commission's rules.

An applicant must also certify in its application that its station meets the operating and programming requirements of the LPPA. An applicant must also submit, as part of its application, documents to support this certification, including a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023, as well as a list of locally produced programs aired during that time period. In addition, an applicant should submit whatever additional documents available to the applicant that it believes best support its certification that it meets the operating and programming requirements of the Act. The Commission staff may later determine that additional documentation is needed to evaluate an application and may at that time require an applicant to submit additional, specific documentation during consideration of the application.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Order* created new or additional recordkeeping and reporting requirements. For example, the rules require that applicants seeking to convert to Class A status under the LPPA certify in their application that they have complied with the LPPA's eligibility requirements during the 90 days preceding the January 5, 2023 enactment of the statute. Additionally, an application must include a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 as well as a list of locally produced programs aired during that time period. The applicant may also submit other documentation to support its certification that the licensee meets the eligibility requirements for a Class A license under the LPPA. If necessary, the Commission staff may also request additional documentation during consideration of the application.

The Order also requires all stations seeking to convert to Class A designation pursuant to the LPPA to submit an application to the Commission within one year from the date the Commission announces that the application window is open. The Commission will not continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute. The Commission will examine, however, on a case-by-case basis, a potential applicant's claim that it was unable to file an application by the deadline due to circumstances beyond its control.

IV. IMPLEMENTATION DATE

The rules adopted in the *Order* will become effective February 9, 2024 (30 days after January 10, 2024, the date the *Order* was published in the Federal Register), except for sections 73.6030(c) and 73.6030(d) which contain new or modified information collection requirements that require review by OMB. At the conclusion of the OMB review process, the Media Bureau will announce the effective date of that information collection in a document published in the Federal Register. The Media Bureau will also issue a Public Notice that establishes the one-year application filing window once the revised application form (FCC Form 2100, Schedule F) is available for use by applicants.

V. INTERNET LINKS

A copy of the *Order*, FCC 23-112, MB Docket No. 23-126, is available at:

<https://www.fcc.gov/document/commission-implements-low-power-protection-act>.

A copy of the Federal Register Summary of the *Order* is available at:

<https://www.federalregister.gov/documents/2024/01/10/2023-28619/low-power-protection-act>.



PUBLIC NOTICE

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

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

DA No. 24-419

Friday May 3, 2024

Report No. SAT-01820

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-20240322-00062	E S3095	Umbra Lab Inc	
Special Temporary Authority			
Grant of Authority			Effective Date: 04/25/2024

Nature of Service: Earth Exploration Satellite Service

On April 25, 2024, the Satellite Programs and Policy Division granted, with conditions, Umbra Lab, Inc.'s request for special temporary authority, for an additional period of up to 60 days, to continue operations of the Umbra-04 space station in the Earth exploration-satellite service down to an orbit with a perigee altitude of 325 km.

SAT-STA-20240429-00090	E S2704	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 05/01/2024

Nature of Service: Fixed Satellite Service

On May 1, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the 3700-4200 MHz, 10.70-10.95 GHz, and 11.2-11.7 GHz (space-to-Earth); and 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following center frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), and 13.999 GHz and 14.498 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

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

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

DA 24-420

Released: May 3, 2024

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 23-310

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

Interconnected VoIP Numbering Authorization Application filed by Union Telephone Company
Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-310 (Sept. 11, 2023), Public Notice, DA 24-325 (WCB Apr. 3, 2024).

Effective Grant Date: May 4, 2024

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

-FCC-

¹ See 47 CFR § 52.15(g)(3).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-421

Released: May 3, 2024

**NOTICE OF PROHIBITED PRESENTATION IN THE MATTER OF SINGLE
NETWORK FUTURE: SUPPLEMENTAL COVERAGE FROM SPACE (GN DOCKET
NO. 23-65); SPACE INNOVATION (IB DOCKET NO. 22-271)**

Notice is hereby given that the Commission received on March 14, 2024, during the Sunshine Agenda Period, a prohibited written presentation by David R. DeBoer, SETI Institute, Hat Creek Radio Observatory.

With specified exceptions not applicable here, section 1.1203 of the Commission's Rules, 47 CFR § 1.1203, prohibits the making of any presentation, whether *ex parte* or not, to decision-making personnel concerning any matter listed on the Commission's Sunshine Agenda, from the day after the Sunshine Agenda is released until the Commission releases the text of a decision or order relating to that matter or removes the item from the Sunshine Agenda. The instant presentation addressed the merits of the above-referenced proceeding, which was included on the Commission's Sunshine Agenda by Public Notice released March 7, 2024 for consideration at the March 14 open Commission meeting. The Commission released the text of a decision terminating the Sunshine Period on March 15, 2024. *Single Network Future: Supplemental Coverage From Space*, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-28 (released Mar. 15, 2024).

Under section 1.1212(d) of the Commission's Rules, 47 CFR § 1.1212(d), presentations that are received during the Sunshine Period and neither meet an exception provided by section 1.1204(a) of the Commission's Rules, 47 CFR § 1.1204(a), nor are covered by a Commission waiver, shall be associated with, but not made a part of, the record in the relevant proceedings. In accordance with the rule, the presentation here will be associated with, but not made part of, the record in the above-referenced proceeding.

The Commission's Reference Information Center, at 45 L Street, NE, Washington, DC 20554, remains closed to the public. When it reopens, the full text of this presentation will be available for public inspection and copying during regular business hours. This filing may also be viewed in the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/>.

Action by the Office of General Counsel, Administrative Law Division.



Federal Communications Commission
Washington, D.C. 20554

May 3, 2024

DA 24-422

In Reply Refer to:

1800B3-ARR

Released: May 3, 2024

City of Erie Cable TV Access Crop
d/b/a Community Access Media
c/o Jacob Jones
P.O. Box 142
Erie, PA 16501
jjones@camerie.org

Re: **City of Erie Cable TV Access Crop
d/b/a Community Access Media**
New LPFM, Erie, Pennsylvania
Facility ID No. 781041
Application File No. 0000232129

Petition for Reconsideration

Dear Applicant:

We have before us a Petition for Reconsideration (Petition)¹ filed by City of Erie Cable TV Access Crop d/b/a Community Access Media (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Erie, Pennsylvania.² For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window.³ On January 25, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)⁴ of the Commission's rules (Rules), with respect to the co-channel licenses of stations WEFM(FM), Erie, Pennsylvania, and WUBJ(FM), Jamestown, New York, and with respect to the second-adjacent channel license of station WMCE(FM), Erie, Pennsylvania. The staff also noted that an amendment was not permitted under section 73.870(c) of the Rules.⁵

¹ Pleading File No. 0000239426 (filed Feb. 18, 2024).

² Application File No. 0000232129 (filed Dec. 8, 2023, amended Dec. 11, 2023).

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

⁴ See 47 CFR § 73.807(a).

⁵ See *Broadcast Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (citing 47 CFR § 73.870(c)) (*Dismissal Public Notice*). See also Application File Nos. BMLED-20130530AMM, BLEDD-20010308AAH, and 0000146816 (license applications for WEFM(FM), WUBJ(FM), and WMCE(FM)).

In the Petition, Petitioner seeks reinstatement of the Application so it can change the proposed Station channel to Channel 248, in order to comply with the section 73.807 spacing requirements.⁶ Specifically, Petitioner: 1) argues that while the Application Tech Box listed Channel 201 instead of its intended Channel 248, the Second Adjacent Waiver Request attached to the Application clearly identifies Channel 248; 2) states that when it amended the Application, it simply forgot to change the value of its channel selection; and 3) argues that its discussions with staff during the filing window and the fact that “it is widely known that” WEFB(FM) is licensed in Erie on Channel 201 shows that its selection of Channel 201 was an error.”⁷ Finally, Petitioner notes that the Commission dismissed similar LPFM applications in previous processing rounds due to section 73.807 location typographical errors, but the applicants corrected those errors, and the Commission reinstated the applications.⁸

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original determination, or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.⁹ Petitioner has not demonstrated any legal error in the Bureau’s dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet the co-channel and second-adjacent channel spacing requirements, as outlined in section 73.807(a).¹⁰ Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission’s Rules.¹¹ Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.¹² Moreover, the *Procedures Public Notice* warned LPFM applicants that, “[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*.”¹³

The Commission has held that when determining technical acceptability, Bureau staff relies *only* on the technical parameters specified within the Tech Box of the application.¹⁴ Bureau staff does *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by

⁶ Petition at 1.

⁷ *Id.* at 4.

⁸ *Id.* at 3 (citing Application File Nos. BNPL-20131114AUD, BNPL-20131112ABV, and BNPL-20131114AVO (collectively, Reinstated 2013 LPFM Applications)).

⁹ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹⁰ 47 CFR § 73.807(a).

¹¹ *Id.*

¹² See *id.* § 73.870(c).

¹³ See *Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)); see also *Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

¹⁴ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 15072, para. 8 (2014) (*Diocese of Portland*).

typographical or other applicant errors.¹⁵ Accordingly, here, the Bureau correctly dismissed the Application because the channel specified in the “Antenna Location Data” Tech Box section of the Application failed to meet the minimum distance spacing requirements of section 73.807(a)(1) with respect to co-channel stations WEFB(FM) and WUBJ(FM), and with respect to second-adjacent channel station WMCE(FM). As noted, the Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the co-channel and second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.¹⁶ Additionally, typographical error claims cannot be used to justify filing an otherwise prohibited amendment.¹⁷

Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission’s dismissal of their applications would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote and be unfair to the many applicants who fully complied with the rules and filing requirements. It is, therefore, contrary to the public interest.¹⁸ Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Reinstated 2013 LPFM Applications. Finally, we reject Petitioner’s reliance on the Reinstated 2013 LPFM Applications. The Reinstated Applications were reinstated pursuant to the Bureau’s former practice to allow otherwise prohibited corrective amendments where an Antenna Site Registration (ASR) number or technical exhibit did not conflict with the intended coordinates of the transmission antenna, or in cases that did not involve section 73.807 minimum distance spacing requirements.¹⁹ The Petitioner cannot rely on any of those exceptions in this case. The Application lacked an ASR number, and designates an incorrect proposed channel, rather than incorrect transmitter coordinates. Moreover, the Reinstated 2013 LPFM Applications predate *Diocese of Portland*, where the Commission clarified that it would, going forward, rely solely on Tech Box data to determine technical acceptability and prohibit

¹⁵ See *id.* (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”); see also *Procedures Public Notice* at 8 (cautioning LPFM applicants of this practice).

¹⁶ See *Calvary Chapel of Bremerton*, Letter Order, 28 FCC Rcd 15537, 15538-39 (MB 2013) (dismissing LPFM applications that fail to meet minimum co-channel spacing requirements, and noting that the Commission does not have authority to waive co-channel spacing requirements); *Christian Charities*, 30 FCC Rcd at 10549, para. 5 (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014) (*People of Progress*); *Clifford Brown*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014)).

¹⁷ *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting argument to correct typographical error where corrective amendment was prohibited) (*NCE MX Group 82*). Because we only rely on the Tech Box data to determine technical acceptability, we reject Petitioner’s arguments that its correspondence with the staff and the fact that WEFB(FM) is licensed in Erie on Channel 201 is “widely known,” demonstrate that its channel selection was a typographical error, and should therefore, be excused.

¹⁸ See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) (“In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.”).

¹⁹ See *People of Progress*, 29 FCC Rcd at 15066, para. 4 and n.12.

applicants from curing a location deficiency in an application with a prohibited amendment.²⁰ Since *Diocese of Portland*, the Commission has repeatedly adhered to this practice.²¹

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by City of Erie Cable TV Access Crop d/b/a Community Access Media, on February 18, 2024 (Pleading File No. 0000239426) **IS DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁰ See *Christian Charities*, 30 FCC Rcd at 10552, n.26 (citing *People of Progress* and *Diocese of Portland*).

²¹ See, e.g., *Renew Taylorsville*, Letter, DA 24-289 (MB 2024) (dismissing application based on Tech Box data and rejecting prohibited amendment to correct typographical errors); *NCE MX Group 82*, *supra* note 17 (same).



PUBLIC NOTICE

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DA 24-423

Released: May 3, 2024

WIRELINE COMPETITION BUREAU UPDATES GUIDANCE REGARDING LOCATIONS AND BROADBAND COVERAGE FOR ENHANCED ALTERNATIVE CONNECT AMERICA MODEL MECHANISM

WC Docket No. 10-90

In this Public Notice, the Wireline Competition Bureau (Bureau) updates guidance regarding location and broadband coverage in the Enhanced Alternative Connect America Model (Enhanced A-CAM) mechanism.¹

The Commission adopted the Enhanced A-CAM mechanism on July 24, 2023, as a voluntary path for supporting widespread deployment of 100/20 Mbps or better broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.² On August 30, 2023, the Bureau released a Public Notice announcing Enhanced A-CAM offers for eligible carriers, as well as the *Enhanced A-CAM Implementation Order*, which addressed matters that had been delegated to the Bureau by the Commission.³ On October 30, 2023, the Bureau authorized 368 companies to receive Enhanced A-CAM support beginning January 1, 2024.⁴ On November 17, 2023, the Enhanced A-CAM commitments were uploaded to the Broadband Funding Map.⁵

In the *Enhanced A-CAM Order*, the Commission directed the Bureau and the Office of Economics and Analytics (OEA) to adjust carriers' lists of required deployment locations as more

¹ *Wireline Competition Bureau Announces Guidance Regarding Locations and Broadband Coverage for Enhanced Alternative Connect America Model Mechanism*, WC Docket No. 10-90, Public Notice, DA 24-78 (WCB rel. Jan. 25, 2024) (*Enhanced A-CAM Locations Public Notice*).

² See *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 42, para. 98 (July 24, 2023) (*Enhanced A-CAM Order*).

³ See *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 (WCB Aug. 30, 2023) (*Enhanced A-CAM Offer PN*); *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Order, DA 23-778 (WCB Aug. 30, 2023) (*Enhanced A-CAM Implementation Order*).

⁴ *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, DA 23-1025 (WCB rel. Oct. 30, 2023). The number of companies was determined by counting each holding company as a distinct company in each state for which it elected Enhanced A-CAM.

⁵ See FCC Broadband Funding Map, available at fundingmap.fcc.gov.

complete data become available, which “specifically shall reflect locations and broadband deployment that existed at the time Enhanced A-CAM offers were made, but were not reflected in the [Broadband Serviceable Location Fabric (Fabric)] or the National Broadband Map,” as well as for enforceable commitments not included in the Broadband Funding Map.⁶

On January 25, 2024, the Bureau set forth guidance (*Enhanced A-CAM Locations Public Notice*) regarding which Fabric location and Broadband Data Collection (BDC) availability data will be used to determine final deployment obligations and support amounts for Enhanced A-CAM recipients.⁷ Specifically, the Bureau announced that, to identify broadband serviceable locations (BSLs) to which deployment may be required (based upon the current availability of 100/20 Mbps or faster broadband service), the Bureau planned to use Version 4 (released December 27, 2023) of the Fabric, also known as the December 2023 Fabric, as modified by any successful challenges to Fabric location data submitted by March 8, 2024.⁸ The Bureau noted that “Version 4 of the Fabric was generated between July and December 2023, and the Bureau and OEA have determined that dataset best represents the locations that existed at the time the offers were made.”⁹ Further, the Bureau announced that, to identify broadband availability at the relevant locations, the Bureau planned to use BDC availability data as of December 31, 2023 that was due to the Commission on March 1, 2024 (the filing window associated with the December 2023 Fabric), as well as any challenges to that vintage of broadband availability that are resolved by May 15, 2025.¹⁰ Due to the potential length of time required to fully resolve broadband availability challenges, the Bureau advised that any challenges must be filed by August 1, 2024 to guarantee resolution by the May 15, 2025 cutoff.¹¹

On April 3, 2024, NTCA, the ACAM Broadband Coalition, USTelecom, and WTA (collectively, the Associations) filed a joint letter proposing adjustments to the process announced by the Bureau.¹² First, the Associations agreed that the December 2023 Fabric, as modified to reflect successful Fabric challenges incorporated into the June 2024 Fabric, should be used, consistent with the Public Notice.¹³ Second, the Associations proposed that BDC availability data as of June 30, 2023, rather than data as of December 31, 2023, should be used for any BSL for which such data are available.¹⁴ The Associations argued that this would avoid the risk of penalizing an Enhanced A-CAM recipient for having deployed 100/20 Mbps or faster service prior to December 31, but after the August 30, 2023, Enhanced A-CAM

⁶ *Enhanced A-CAM Order* at para. 43.

⁷ *Enhanced A-CAM Locations Public Notice* at 2-4.

⁸ *Id.* at 2. Successful challenges to the Fabric would include additions and removals of BSLs, as well as changes to the unit counts for existing BSLs.

⁹ *Id.*

¹⁰ *Id.* at 3. The Bureau further noted that “[i]n the small number of cases where a location is added to Fabric Version 5 due to a timely successful challenge [of Fabric Version 4], the Bureau plans to use broadband availability data as of June 30, 2024 for those locations (the filing round associated with Fabric Version 5), as modified by any availability challenges to such data that are resolved by May 15, 2025.” *Id.*

¹¹ *Id.*

¹² Letter from Michael R. Romano, NTCA-The Rural Broadband Association, et al., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90 et al. (filed Apr. 3, 2024).

¹³ *Id.* at 2. For the purposes of creating this Enhanced-ACAM-specific version of the Fabric, the Bureau will include as successful challenges those that have a response code ending in .0, indicating that the challenge has been accepted, and those ending in .23, indicating that the challenge was not accepted, but changes to the Fabric after the challenge was filed overtake the challenge (e.g., a location was added to the Fabric at the same location where a challenge had been filed). See <https://help.bdc.fcc.gov/hc/en-us/articles/17077103993371-Fabric-Challenge-Response-Codes> for a full explanation of Fabric-challenge response codes.

¹⁴ *Id.*

offer date.¹⁵ Third, the Associations recognized that there would be BSLs for which there was no June 30, 2023 availability data, and therefore the December 31, 2023 availability data should be used for such locations.¹⁶ The Associations stated that the resolution of pending challenges to the June 2023 availability data should be incorporated into the final Enhanced A-CAM deployment obligations, as should challenges to the December 2023 Fabric or to the December 2023 availability for BSLs for which December 2023 availability data would be used, consistent with the *Enhanced A-CAM Locations Public Notice*.¹⁷

Consistent with the Commission direction to adjust carriers' lists of required deployment locations to reflect locations and broadband deployment that existed at the time the agency announced Enhanced A-CAM offers, the Bureau hereby modifies its guidance in the *Enhanced A-CAM Public Notice* to adopt the approach set forth in the Associations' letter. Specifically, to best reflect deployment as of the August 30, 2023 offer, the Bureau will use BDC broadband availability data as of June 30, 2023 to determine deployment obligations and support for locations in the December 2023 Fabric for which such availability data are available. Using Fabric data matched to the corresponding availability data collected for that vintage of the Fabric provides the most accurate picture of broadband availability for each biannual as-of date and promotes greater data integrity and transparency. However, the Bureau recognizes that some Enhanced A-CAM electing carriers may have relied on the "as of August 30" condition in the *Enhanced A-CAM Order* in both electing Enhanced A-CAM and making decisions to upgrade service in late 2023, and we will therefore match the earlier June 30, 2023 version of availability data with the December 2023 Fabric. In delegating to the Bureau the authority to determine the scope of broadband coverage at the time of the Enhanced A-CAM offer (and by extension the final deployment obligations and support amounts for Enhanced A-CAM-electing carriers), the Commission expected that the Enhanced A-CAM carriers, as incumbent local exchange carriers, would be aware of the locations and availability of competitive broadband in the area and that they would make their Enhanced A-CAM election based on that knowledge.¹⁸ The Bureau thus presumes that, as of the August 30, 2023, offer date, Enhanced A-CAM-electing carriers reasonably had knowledge of broadband coverage as of June 30, 2023, and thus using that vintage of availability data better aligns with the Commission's expectation.¹⁹

Parties have been able to make challenges to June 2023 broadband availability data since it was published on the National Broadband Map in November 2023, and such challenges may be made until the National Broadband Map is updated later this month to reflect the more recent broadband availability data reported to the Commission. Availability challenges filed after the National Broadband Map is updated in May will apply to December 2023 availability data and will not be retroactively applied to June 2023 availability data reported for the same location.²⁰ Therefore, the Bureau strongly encourages parties that intend to file challenges to the June 2023 broadband availability data to do so as soon as possible before the next version of the map is released.

Finally, to the extent that June 2023 broadband availability data cannot be matched to locations in the December 2023 Fabric because those locations were not part of the previous Fabric, as proposed by the Associations, we will use December 2023 availability data. Further, as previously described in the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Enhanced A-CAM Order*, at 16-17, para. 34.

¹⁹ In the *Enhanced A-CAM Locations Public Notice*, the Bureau concluded that the December 2023 Fabric "best represents the locations that existed at the time offers were made." *Enhanced A-CAM Locations Public Notice*, at 2.

²⁰ See National Broadband Map: 2024 Key Dates, available at <https://www.fcc.gov/sites/default/files/national-broadband-map-2024-key-dates.pdf>. The Associations were advised that challenges to the June 2023 availability data must be submitted prior to the publication of the next version of the National Broadband Map in May 2024.

Enhanced A-CAM Locations Public Notice, the Bureau will also use June 2024 broadband availability data to determine Enhanced A-CAM support amounts and deployment obligations for any additional locations added to Version 5 of the Fabric as a result of challenges to Version 4. Using these later vintages of broadband availability data is necessary to ensure that all Enhanced A-CAM locations have associated broadband deployment information. The December 2023 broadband availability data is the next closest vintage if there is no June 2023 broadband availability data for a particular location, and June 2024 data is the next data set if there is no December 2023 availability data for that location.

For additional information on this proceeding, please contact Ted Burmeister (Theodore.Burmeister@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

- FCC -

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

In the Matter of	)	
	)	
Connect America Fund: A National Broadband	)	WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service	)	
Support	)	
	)	

ORDER

Adopted: May 3, 2024

Released: May 3, 2024

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives the Commission's rules, *sua sponte*, to the limited extent provided herein, to include in West Side Telephone Company's (West Side's) Enhanced Alternative Connect America Model (Enhanced A-CAM) offer locations that would otherwise have been treated as served by a competitor due to a federally enforceable commitment by ClearFiber. As we explain in more detail below, this limited waiver applies only to the locations within West Side's West Virginia study area where ClearFiber, Inc., is no longer subject to a grant from the Rural Utilities Service to deploy broadband.¹ This waiver reflects coordination with our sister federal agencies and state broadband offices to ensure the efficient use of federal broadband funding to provide access to all Americans.

II. BACKGROUND

2. The Commission adopted the Enhanced A-CAM mechanism on July 24, 2023, as a voluntary path for supporting widespread deployment of 100/20 Mbps or better broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.² In order to avoid duplicative spending, the Commission directed the Bureau to "coordinate the areas under consideration for Enhanced A-CAM offers with other federal agencies, e.g., the Rural Utilities Service, NTIA, and the Department of Treasury, and to remove from eligibility locations already subject to enforceable commitments to deploy 100/20 or faster broadband service [at the time of the offer]."³ Pursuant to the *Enhanced A-CAM Order*, locations that were, as of the date of the Enhanced A-CAM offer, subject to a federally enforceable commitment for a broadband provider to deploy 100/20 Mbps or faster service were treated as served for purposes of Enhanced A-CAM obligations and support.⁴ Recognizing that "[c]omplete information on federal commitments will

¹ See USDA Rural Development has approved a grant of \$3,000,000.00, USDA Rural Development, U.S. Department of Agriculture, <https://www.rd.usda.gov/sites/default/files/CCProjectSummariesWestVirginia.pdf>, at 2.

² 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; Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (July 24, 2023) (*Enhanced A-CAM Order*).

³ *Enhanced A-CAM Order* at 20, para. 42; 47 CFR § 54.308(a)(3)(i).

⁴ *Id.*

likely not be available in the National Broadband Funding Map at the time Enhanced A-CAM offers are made or elected,” the Commission directed the Bureau and the Office of Economics and Analytics to adjust carriers’ lists of required deployment locations and support to reflect improvements in data no later than December 31, 2025.⁵

3. In September 2019, ClearFiber was awarded a Community Connects Grant from the Rural Utilities Service (RUS) to deploy broadband service in Monongalia County, West Virginia.⁶ The area for this grant partially overlapped the service area of West Side Telephone, an incumbent local exchange carrier that subsequently elected Enhanced A-CAM. As a result, locations in that portion of West Side Telephone’s service area were treated as if they were served by a competitor. Under Enhanced A-CAM, West Side therefore would not receive support for these locations and would have no obligation to deploy 100/20 Mbps or faster service to them.

4. RUS has recently determined that ClearFiber would not be able to complete its deployment obligations, and reduced ClearFiber’s grant accordingly, resulting in some West Virginia locations no longer being funded through RUS.⁷ Therefore, approximately 180 locations within West Side Telephone’s service area that were treated as served by a competitor when the Commission announced Enhanced A-CAM offers are no longer subject to a federally enforceable commitment.⁸

III. DISCUSSION

5. After consultation with West Side Telephone, RUS, the National Telecommunications and Information Administration (NTIA), and the West Virginia State Office of Broadband, the Bureau concludes that the public interest favors including those locations which are no longer subject to an enforceable commitment by ClearFiber within Enhanced A-CAM. West Side Telephone has stated that it will accept Enhanced A-CAM support for these locations if they are included in the program.⁹ Accordingly, the Bureau waives the Commission’s rules as necessary to provide that locations subject to ClearFiber’s enforceable commitment at the time of the Enhanced A-CAM offer that are no longer receiving RUS funding will not be treated as “competitor-served” due to that enforceable commitment. Enhanced A-CAM support will be provided for those locations consistent with the Enhanced A-CAM rules, and West Side Telephone will be required to deploy broadband service to those locations.

6. Generally, the Commission’s rules may be waived for good cause shown.¹⁰ 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.¹¹ We believe that both circumstances are present here.

7. Special circumstances are present because of the removal of ClearFiber’s enforceable commitment to complete its deployment obligation under RUS’s Community Connects Grant in certain locations in West Virginia. At the time of the Enhanced A-CAM offer, these locations within West Side Telephone’s service area were subject to an enforceable commitment, so treating these locations as served

⁵ See *Enhanced A-CAM Order*, at 21, 33-34, paras. 43, 77.

⁶ See <https://www.rd.usda.gov/sites/default/files/CCProjectSummariesWestVirginia.pdf>, at 2.

⁷ FCC National Broadband Map, Federal Communications Commission, <https://broadbandmap.fcc.gov> (Broadband Funding Map).

⁸ *Id.*

⁹ West Side Telephone has accepted an offer of Enhanced A-CAM support for these locations if the Commission makes them eligible.

¹⁰ 47 CFR § 1.3.

¹¹ 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)) (*Northeast Cellular*).

by a competitor and removing them from the list of Enhanced A-CAM eligible locations worked to conserve limited federal resources. The removal of the enforceable commitment in these locations was an unanticipated change in circumstances that, had it occurred prior to the Enhanced A-CAM offer, would have made the affected locations eligible for Enhanced A-CAM. Moreover, consistent with the schedule set forth by the Commission, the Bureau's process to finalize Enhanced A-CAM deployment obligations and support amounts for electing carriers is still ongoing. We further note that, in light of these changed circumstances and the absence of an enforceable commitment in these locations, West Side has agreed to provide high-speed broadband service to the locations ClearFiber had previously committed to serve using RUS funding. Changing the scope of West Side's offer at this time, therefore, would not harm West Side. In this scenario, a waiver of our rule removing areas subject to an enforceable commitment from inclusion in Enhanced A-CAM is warranted.

8. The public interest would also be served by such a waiver. Granting the waiver will result in broadband deployment with no impact to West Virginia's BEAD funding. Without such a waiver, neither ClearFiber nor West Side Telephone would receive support to deploy high-speed broadband service to the affected locations, which would not serve the public interest. Absent a waiver, West Virginia would likely be required to allocate Broadband Equity, Access, and Deployment Program (BEAD) funding to facilitate deployment to the locations ClearFiber had previously committed to serve. By granting a waiver and allowing West Side to receive Enhanced A-CAM support for those locations, West Virginia will be able to more efficiently utilize its limited BEAD funding and facilitate deployment in areas that are not covered by a different state or federal program, which is consistent with Enhanced A-CAM's goals.¹² Accordingly, the public interest is served by making the listed locations eligible for Enhanced A-CAM support and obligations, consistent with the remainder of the Commission's rules governing Enhanced A-CAM.

9. Moreover, the waiver will not significantly increase the budget for Enhanced A-CAM. Predicted Enhanced A-CAM support is below the budget approved by the Commission. Making these locations¹³ eligible for Enhanced A-CAM support will minimally increase the program's expenditures, however, the expenditures will still remain below the program's budget. Accordingly, making these locations eligible for Enhanced A-CAM is in the public interest.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that 47 CFR § 54.308(a)(3)(i) is WAIVED to the limited extent described herein.

¹² *Enhanced A-CAM Order* at 43, para. 100 (noting the goal of "maximiz[ing] the deployment of high-quality broadband service by helping states and other eligible entities set allocations for the BEAD Program and further the efficient use of federal broadband funding, including additional programs funded by other federal agencies.").

¹³ The Broadband Funding Map already indicates that this area is included within Enhanced A-CAM. In addition, we will include the locations in this area when the Enhanced A-CAM Interim Eligible Locations List is next updated. *See* Enhanced A-CAM, Rate of Return Resources, Federal Communications Commission, <https://www.fcc.gov/general/rate-return-resources>.

12. 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



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 24-425
Released: May 6, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 24-43

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
Ligonier Telephone Company and LigTel Communications, Inc.,
WC Docket No. 24-43, Public Notice, DA 24-336 (WCB 2024).

Effective Grant Date: May 6, 2024

For further information, please contact Tracey Wilson at (202) 418-1394 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 24-426

Released: May 6, 2024

MEDIA BUREAU ANNOUNCES PUBLICATION OF FORM 395-B FOURTH REPORT AND ORDER AND ORDER ON RECONSIDERATION

MB Docket No. 98-204

On February 22, 2024, the Commission released the Form 395-B Fourth Report and Order (*Fourth Report and Order*) and Order on Reconsideration (*Order on Reconsideration*).¹ The *Fourth Report and Order* reinstates the Form 395-B data collection for broadcast licensees, requiring them to report race, ethnicity, and gender information about employees within specified job categories on an annual basis, as required by the Communications Act of 1934, as amended. The *Order on Reconsideration* amends section 73.3612 of the Commission's rules to incorporate language prohibiting use of this collected data for assessing compliance with the nondiscrimination or equal employment opportunity requirements of section 73.2080 of the Commission's rules.

By this Public Notice, the Media Bureau (Bureau) announces that the *Fourth Report and Order* and *Order on Reconsideration* were published in the Federal Register on May 3, 2024, and shall be effective as of June 3, 2024.²

Compliance with portions of the *Fourth Report and Order* and *Order on Reconsideration*, which may contain new or modified information collection requirements will not be required until the Office of Management and Budget (OMB) completes review of any information collections that OMB determines is required under the Paperwork Reduction Act. The Bureau will publish a subsequent Public Notice announcing the compliance date for the *Fourth Report and Order* and *Order on Reconsideration*.

- FCC -

¹ *Review of the Commission's Broadcast and Cable Equal Opportunity Rules and Policies*, MB Docket No. 98-204, Fourth Report and Order and Order on Reconsideration, FCC 24-18 (rel. Feb. 22, 2024) (*Fourth Report and Order and Order on Reconsideration*).

² Federal Communications Commission, *Review of the Commission's Broadcast and Cable Equal Opportunity Rules and Policies*, 89 FR 36705 (May 3, 2024).

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

In the Matter of	)	
	)	
AT&T, Inc.	)	File No.: EB-TCD-18-00027704
	)	NAL/Acct. No.: 202032170004
	)	FRN: 00057193701

FORFEITURE ORDER

Adopted: April 17, 2024

Released: April 29, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
A. Legal Background	2
B. Factual Background	8
III. DISCUSSION	17
A. Location Information is CPNI	18
B. AT&T Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act	31
C. AT&T Failed to Take Reasonable Steps to Protect CPNI	38
1. AT&T's Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222	39
2. AT&T's Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures	41
3. AT&T Bore the Burden of Production	47
D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent	54
1. The Commission Reasonably Found that AT&T Engaged in 84 Continuing Violations That Warranted an Upward Adjustment	56
2. AT&T Willfully and Repeatedly Violated the Act and the Commission's Rules	63
3. The Commission Rightfully Treated LBS Providers Equally for Purposes of Calculating Violations	66
E. Section 503(b) Is Employed Here Consistent With the Constitution	68
IV. CONCLUSION	82
V. ORDERING CLAUSES	83

I. INTRODUCTION

1. On February 28, 2020, the Commission issued a Notice of Apparent Liability for Forfeiture and Admonishment (*NAL*) against AT&T, Inc. (AT&T or Company).¹ In the *NAL*, the Commission admonished AT&T for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it, and proposed to fine AT&T \$57,265,625 for failing to take reasonable steps to protect its customers' location information. After

¹ *AT&T, Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743 (2020) (*NAL*).

reviewing the Company's response to the *NAL*,² we find no reason to cancel, withdraw, or reduce the proposed penalty, and impose a penalty of \$57,265,625 against AT&T.

II. BACKGROUND

A. Legal Background

2. As set forth fully in the *NAL*,³ carriers are required to protect the confidentiality of certain customer data related to the provision of telecommunications service. This includes location information, which is customer proprietary network information (CPNI) pursuant to section 222 of the Communications Act (Act).⁴ The Commission has advised carriers that this duty requires them to take "every reasonable precaution" to safeguard their customers' information.⁵ Section 222(a) of the Act imposes a general duty on telecommunications carriers to "protect the confidentiality of proprietary information" of "customers."⁶ Section 222(c) establishes specific privacy requirements for "customer proprietary network information" or CPNI, namely information relating to the "quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" and that is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁷ The Commission has promulgated regulations implementing section 222 (CPNI Rules), which require, among other things, that carriers employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."⁸

3. *Customer Consent to Disclose CPNI.* With limited exceptions, a carrier may only use, disclose, or permit access to CPNI with customer approval.⁹ Generally, carriers must obtain a customer's "opt-in approval" before disclosing that customer's CPNI.¹⁰ This means that a carrier must obtain the customer's "affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request"¹¹

4. This opt-in requirement has been in place since 2007, when the Commission amended its rules in the *2007 CPNI Order* after finding that once carriers disclosed CPNI to third parties, including

² *AT&T, Inc.*, Response to Notice of Apparent Liability for Forfeiture and Admonishment (filed May 7, 2020) (on file in EB-TCD-18-00027704) (*NAL Response* or *Response*).

³ See generally *NAL*.

⁴ 47 U.S.C. § 222.

⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959, para. 64 (2007) (*2007 CPNI Order*).

⁶ 47 U.S.C. § 222(a).

⁷ 47 U.S.C. § 222(c), (h)(1)(A) (emphasis added). "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). The mobile voice services provided by AT&T are "telecommunications services." See 47 U.S.C. § 332(c)(1); H.R. Conf. Rep. No. 104-458 at 125 (1996) ("This definition [of 'telecommunications service'] is intended to include commercial mobile service.").

⁸ See 47 CFR § 64.2001 *et seq.*; *id.* § 64.2010(a). The CPNI Rules are a subset of, and are thus included within, the Commission's rules.

⁹ 47 U.S.C. § 222(c)(1) ("Except as required by law *or with the approval of the customer*, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.") (emphasis added).

¹⁰ 47 CFR § 64.2007(b).

¹¹ 47 CFR § 64.2003(k).

joint venturers and independent contractors, that information was out of the control of the carrier and had a higher risk of being improperly disclosed.¹² Accordingly, among other things, this opt-in requirement was meant to allow individual consumers to determine if they wanted to bear the increased risk associated with sharing CPNI with such third parties.¹³ In the Commission's view, obtaining a customer's express consent in these circumstances is particularly important, because a carrier cannot simply rectify the harms resulting from a breach by terminating its agreement with such a third party, "nor can the Commission completely alleviate a customer's concerns about the privacy invasion through an enforcement proceeding."¹⁴ The Commission further concluded that contractual safeguards between a carrier and such a third party do not obviate the need for explicit customer consent, as such safeguards do not eliminate the increased risk of unauthorized CPNI disclosures that accompany information that is provided by a carrier to such a third party.¹⁵ Thus, the Commission determined that, with limited exceptions, a carrier may only use, disclose, or permit access to CPNI with the customer's opt-in approval.¹⁶

5. *Reasonable Measures to Safeguard CPNI.* The Commission has also recognized that an opt-in requirement alone is not enough to protect customer CPNI, especially in light of tactics like "pretexting," where a party pretends to be a particular customer or other authorized person in order to illegally obtain access to that customer's information (thus circumventing opt-in requirements).¹⁷ Therefore, the Commission adopted rules requiring carriers to "take reasonable measures to *discover* and *protect* against attempts to gain unauthorized access to CPNI."¹⁸ To provide some direction on how carriers should protect against tactics like pretexting, the Commission included in its amended rules customer authentication requirements tailored to whether a customer is seeking in-person, online, or over-the-phone access to CPNI.¹⁹ It also adopted password and account notification requirements.²⁰

6. The Commission made clear that the specific customer authentication requirements it adopted were "minimum standards" and emphasized the Commission's commitment "to taking resolute enforcement action to ensure that the goals of section 222 [were] achieved."²¹ Although carriers are not expected to eliminate every vulnerability to the security of CPNI, they must employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."²² They must also take reasonable measures to protect the confidentiality of CPNI—a permanent and ongoing obligation to police disclosures and ensure proper functioning of security measures.²³ As the Commission stated in the

¹² 2007 CPNI Order, 22 FCC Rcd at 6947-53, paras. 37-49. Prior to the 2007 CPNI Order the Commission's rules had allowed carriers to share CPNI with joint venture partners and independent contractors on an opt-out basis for the purpose of marketing communications-related services to customers. *Id.* at 6931-32, para. 8.

¹³ 2007 CPNI Order, 22 FCC Rcd at 6950, para. 45.

¹⁴ 2007 CPNI Order, 22 FCC Rcd at 6949, para. 42.

¹⁵ 2007 CPNI Order, 22 FCC Rcd at 6952, para. 49.

¹⁶ See 47 CFR § 64.2007(b).

¹⁷ See 2007 CPNI Order, 22 FCC Rcd at 6928, para. 1 & n.1.

¹⁸ 47 CFR § 64.2010(a) (emphasis added).

¹⁹ See 47 CFR § 64.2010(b)-(d).

²⁰ See 47 CFR § 64.2010(e)-(f).

²¹ 2007 CPNI Order, 22 FCC Rcd at 6959-60, para. 65.

²² 47 CFR § 64.2010(a).

²³ See 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64 ("We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.").

NAL, several government entities provide guidance and publish best practices that are intended to help companies evaluate the strength of their information security measures.²⁴

7. *Section 217.* Finally, the Act makes clear that carriers cannot disclaim their statutory obligations to protect their customers' CPNI by delegating such obligations to third parties. Section 217 of the Act provides that "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."²⁵

B. Factual Background

8. *Customer Location Information and AT&T Location-Based Services Business Model.* AT&T provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on AT&T's wireless network.²⁶ As part of its business, AT&T ran a Location-Based Services (LBS) program until March 2019. Through the LBS program, AT&T sold access to its customers' location information to companies known as "location information aggregators," who then resold access to such information to third-party location-based service providers or in some cases to intermediary companies who then resold access to such information to location-based service providers.²⁷ AT&T had arrangements with two location information aggregators: LocationSmart and Zumigo (the Aggregators).²⁸ Each Aggregator, in turn, had arrangements with location-based service providers. In total, AT&T sold access to its customers' location information (directly or indirectly) to 88 third-party entities (including the two Aggregators).²⁹

9. The AT&T LBS program was largely governed via contractual provisions that vested AT&T with oversight authority over the Aggregators. The Aggregators then entered into their own contracts with various LBS providers. This arrangement meant that it was the LBS providers who were obligated "to provide notice and obtain consent" from consumers—not the Aggregators or AT&T. AT&T asserts that its LBS program was subject to a number of safeguards and that the LBS providers and Aggregators had to satisfy various requirements, which were memorialized in and governed by contract

²⁴ For example, the National Institute of Standards and Technology (NIST) is responsible for developing information security standards and guidelines, including minimum requirements for federal information systems. NIST publishes cybersecurity and privacy frameworks which feature instructive practices and guidelines for organizations to reference. The publications can be useful in determining whether particular cybersecurity or privacy practices are reasonable by comparison. The model practices identified in the NIST and other frameworks, however, are not legally binding rules, and we do not consider them as such here. The Federal Trade Commission (FTC), the FCC's Communications Security, Reliability, and Interoperability Council (CSRIC), and the Cybersecurity & Infrastructure Security Agency (CISA) also offer guidance related to managing data security risks. See NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1 (Apr. 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (NIST Cybersecurity Framework); NIST, The NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0 (Jan. 16, 2020), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf>; FTC, Start with Security: A Guide for Business, Lessons Learned from FTC Cases (June 2015), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>; Communications Security, Reliability and Interoperability Council, CSRIC Best Practices, <https://opendata.fcc.gov/Public-Safety/CSRIC-Best-Practices/qb45-rw2t/data>; CISA, Cross-Sector Cybersecurity Performance Goals and Objectives (last visited Aug. 17, 2022), <https://www.cisa.gov/cpgs>.

²⁵ 47 U.S.C. § 217.

²⁶ See AT&T, Inc., 2021 Annual Report, <https://investors.att.com/~media/Files/A/ATT-IR-V2/financial-reports/annual-reports/2021/complete-2021-annual-report.pdf>.

²⁷ The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See NAL, 35 FCC Rcd at 1748-56, paras. 11-30.

²⁸ AT&T does not contend that its customers consented to these arrangements with the Aggregators.

²⁹ See NAL, 35 FCC Rcd at 1748-50, paras. 12-13 (citations omitted).

provisions with the Aggregators and any parties that AT&T directly sold location information to.³⁰ The contracts obligated the Aggregators to monitor the practices of the location-based service providers—including by making sure the LBS providers notified customers and collected affirmative customer consent for any use of location information.³¹ However, AT&T did not verify the customers' consent before providing access to the location information; instead it claimed to verify on a daily basis that each request for information was tied to a consent record.³² In addition, each LBS provider was contractually required to access and use AT&T customer location information only for a specific purpose (known as a "Use Case") that was reviewed and approved by AT&T in advance.³³ AT&T had broad authority under its contracts with the Aggregators to quickly terminate access to customer location information if an Aggregator engaged in conduct that exposed AT&T to "sanctions, liability, prosecution or other adverse consequences under applicable law."³⁴

10. AT&T also had the authority to conduct audits and other internal reviews of the LBS program. According to AT&T, between January 2016 and May 2019, it conducted five reviews or audits of its disclosure of customer location information to third parties.³⁵ The Company claims that three of the five analyses are subject to attorney-client privilege, however, and submitted the results only of the two reviews that AT&T treated as non-privileged.³⁶ The results of those two audits identified various issues of concern. One audit, which reviewed the Aggregators' compliance with AT&T information security requirements for third-party vendors, identified numerous instances of non-compliance with security requirements by both Aggregators.³⁷ The other audit, focused on a review of AT&T's controls over certain disclosures of customer location information for the provision of location-based services, identified issues related to the "completeness of subscriber consents" and "record retention practices regarding subscriber consents."³⁸ AT&T averred that the issues identified in both audits were

³⁰ See *NAL*, 35 FCC Rcd at 1750-51, paras. 15-17 (citations omitted).

³¹ See *NAL*, 35 FCC Rcd at 1750, para. 16 (citing Response to Initial Letter of Inquiry from AT&T, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 6, Response to Question 1 (Nov. 14, 2018) (on file in EB-TCD-18-00027704) (LOI Response)).

³² See *NAL*, 35 FCC Rcd at 1750-51, para. 16 (citing Response to Supplemental Letter of Inquiry from AT&T, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 11, Response to Question 9 (May 24, 2019) (on file in EB-TCD-18-00027704) (Supplemental LOI Response)).

³³ See *NAL*, 35 FCC Rcd at 1750, para. 15.

³⁴ See *NAL*, 35 FCC Rcd at 1751, para. 17 (citing LOI Response at ATT-LOI-00013380, Response to Request for Documents No. 3, 2016 Master Agreement between AT&T Corp. and TechnoCom Corporation d/b/a LocationSmart, at Section 8.2 - Termination or Suspension (executed on Feb. 17, 2016 by Mario Proietti, CEO for LocationSmart and Glenn C. Girard, Assoc Dir. Customer Contracts-AT&T Services, Inc.); LOI Response at ATT-LOI-00025859, Response to Request for Documents No. 3, 2014 Master Agreement between AT&T Corp. and Zumigo, Inc., Section 8.2 - Termination or Suspension (executed on Apr. 25, 2014 by Chira Bakshi, CEO for Zumigo and Ana Castaneda, Contract Specialist for AT&T)). The contracts required the Aggregators to indemnify AT&T for various types of claims, including those arising from privacy violations, but did not provide for any other remedy—such as direct restitution to affected customers—in the event of breach.

³⁵ See *NAL*, 35 FCC Rcd at 1751, para. 18 (citing LOI Response at 19-21, Response to Question 11; Supplemental LOI Response at 16, Response to Question 15).

³⁶ See *NAL*, 35 FCC Rcd at 1751, para. 18 (citing LOI Response at 20-21, Response to Question 11; Supplemental LOI Response at 16, Response to Question 15).

³⁷ See *NAL*, 35 FCC Rcd at 1751-52, para. 18 (citing LOI Response at 19-20, Response to Question 11).

³⁸ See *NAL*, 35 FCC Rcd at 1751, para. 18 (citing LOI Response at 20, Response to Question 11).

remediated.³⁹ AT&T provided the general topics of the remaining three audits, but declined to produce any other information concerning those privileged reviews.

11. *Unauthorized Access and Use of Customer Location Information.* On May 10, 2018, the *New York Times* published an article that detailed security breaches involving AT&T's (and other carriers') practice of selling access to customer location information.⁴⁰ The *NAL* includes a more detailed summary of the article and its findings, but essentially the breaches involved a location-based service provider (Securus Technologies, Inc., or Securus) that offered a location-finding service to law enforcement and corrections officials that allowed such officials to access customer mobile device location *without* that device owner's knowledge or consent.⁴¹ Not only was Securus's location-finding service outside the scope of its approved "Use Case" or any agreement with either Aggregator (and thus had not been reviewed by AT&T), but despite Securus's claims that the program required appropriate "legal authorization," it did not verify such authorizations and its program was used and abused by a (now former) Missouri Sheriff (Cory Hutcheson) for non-law enforcement purposes and in the absence of any such legal authorization.⁴² AT&T conceded that it was unable to distinguish location requests unrelated to the authorized Use Case (which involved an inmate collect-calling service) because each request included a customer consent record that was identical to the records received for the approved service.⁴³

12. The Department of Justice's U.S. Attorney's Office for the Eastern District of Missouri charged Hutcheson with, among other things, wire fraud and illegally possessing and transferring the means of identification of others, and Hutcheson pleaded guilty on November 20, 2018.⁴⁴ The Department of Justice's investigation of Hutcheson's actions included an examination of how the Securus location-finding service operated. Once Hutcheson became an authorized user of Securus's LBS software, he was able to obtain the location of specific mobile telephone devices.⁴⁵ In order to do so, users (including Hutcheson) were required to input the telephone number of the device they wanted to locate, and then "upload a document manually checking a box, the text of which stated, '[b]y checking this box, I hereby certify the attached document is an official document giving permission to look up the location on this phone number requested.'"⁴⁶ As soon as Hutcheson (or any other authorized user) submitted his request and uploaded a document, the Securus LBS platform would *immediately* provide

³⁹ See *NAL*, 35 FCC Rcd at 1751-52, para. 18 (citing LOI Response at 19-20, Response to Question 11; Supplemental LOI Response at 9, Response to Question 7).

⁴⁰ See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

⁴¹ See *NAL*, 35 FCC Rcd at 1752-53, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

⁴² See *NAL*, 35 FCC Rcd at 1752-53, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, Riverfront Times (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>).

⁴³ See *NAL*, 35 FCC Rcd at 1753, para. 23.

⁴⁴ See Press Release, U.S. Attorney's Office Eastern District of Missouri, *Mississippi County Sheriff Pleads Guilty to Fraud and Identity Theft, Agrees to Resign* (Nov. 20, 2018), <https://www.justice.gov/usao-edmo/pr/mississippi-county-sheriff-pleads-guilty-fraud-and-identity-theft-agrees-resign>.

⁴⁵ See Government's Sentencing Memorandum at 3, *United States v. Corey Hutcheson*, Case No. 1:18-CR-00041 JAR, Doc. No. 65 (E.D. Mo. Apr. 23, 2019) (Hutcheson Sentencing Memo), <https://storage.courtlistener.com/recap/gov.uscourts.moed.160663/gov.uscourts.moed.160663.65.0.pdf>; see also *NAL*, 35 FCC Rcd at 1752-53, paras. 20-21.

⁴⁶ Hutcheson Sentencing Memo at 3; see also *NAL*, 35 FCC Rcd at 1752, para. 20.

the requested location information (regardless of the adequacy of the uploaded document).⁴⁷ Rather than “uploading the required legal process,” Hutcheson instead “routinely uploaded false and fraudulent documents . . . , each time representing that the uploaded documents were valid legal process authorizing the location requests the defendant made.”⁴⁸ Those “false and fraudulent documents” included “his health insurance policy, his auto insurance policy, and pages selected from Sheriff training materials.”⁴⁹ Hutcheson “submitted thousands of Securus LBS requests and obtained the location data of hundreds of individual phone subscribers without valid legal authorization.”⁵⁰

13. *AT&T’s Response to the Securus Disclosures.* AT&T terminated Securus’s access to AT&T customer location information in May 2018, following the *New York Times* article.⁵¹ In June 2018, AT&T announced that it would phase out access to location information for the Aggregators and certain location-based service providers, except for those that the Company identified as offering public benefits, such as emergency services or fraud prevention.⁵² Although AT&T did not specify how long the process would take, according to AT&T it terminated the access of 36 location-based service providers to its customer location information by the end of 2018.⁵³ In November 2018, AT&T told Enforcement Bureau staff that it planned to implement “enhanced” notice and consent measures for location information-sharing in 2019 for the remaining location-based service providers, though in its NAL Response the Company states that those efforts were rendered moot by its January 10, 2019, decision to completely shut down the LBS program.⁵⁴ According to AT&T, it terminated the access to its customer location information of an additional 28 location-based service providers by the end of January 2019 and an additional 10 such providers by the end of February 2019.⁵⁵

14. AT&T’s decision to end its LBS program followed a January 8, 2019, Motherboard article alleging that access to customer location information was sold and resold, with little or no oversight, within the bail bonds industry, and that this led to consumers being tracked without their knowledge or consent.⁵⁶ That article focused in part on the activities of a company called MicroBilt, whose access to customer location information was suspended by AT&T on January 4, 2019.⁵⁷ On January 10, 2019, AT&T announced that “[i]n light of recent reports about misuse of location services, we decided to eliminate all location aggregator services—even those with clear consumer benefits” and stated that its location-based service program would end in March 2019.⁵⁸ While AT&T states that it sent

⁴⁷ See Hutcheson Sentencing Memo at 3-4; *see also* NAL, 35 FCC Rcd at 1752, para. 20.

⁴⁸ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1753, para. 21.

⁴⁹ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1753, para. 21.

⁵⁰ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1753, para. 21.

⁵¹ See NAL, 35 FCC Rcd at 1753, para. 23.

⁵² See NAL, 35 FCC Rcd at 1754, para. 25 (citing Supplemental LOI Response at 1, Introduction); *see also* NAL Response at 29.

⁵³ See NAL, 35 FCC Rcd at 1754, para. 25; *see also* NAL Response at 29.

⁵⁴ See NAL, 35 FCC Rcd at 1754, para. 25; NAL Response at 31-32.

⁵⁵ See NAL, 35 FCC Rcd at 1755-56, para. 29; NAL Response at 34.

⁵⁶ See NAL, 35 FCC Rcd at 1755, para. 27 (citing Joseph Cox, *I Gave a Bounty Hunter \$300. Then He Located Our Phone*, Motherboard (Jan. 8, 2019), https://motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-MicroBilt-zumigo-tmobile).

⁵⁷ See NAL, 35 FCC Rcd at 1755, para. 26.

⁵⁸ See Alfred Ng, *AT&T is Cutting Off All Location-Data Sharing Ties in March*, CNET (Jan. 11, 2019), <https://www.cnet.com/news/at-t-is-cutting-off-all-location-data-sharing-ties-by-march/>.

notices of termination to the two Aggregators in January 2019,⁵⁹ it was not until March 29, 2019, that its LBS program (and the sharing of AT&T's customers' location information) finally ceased.⁶⁰ In other words, the Company did not finally terminate its location-based service program until March 29, 2019,⁶¹ or 323 days from when the *New York Times* first reported on the Securus location-finding service, as well as the abuse of that service by Hutcheson.

15. *Notice of Apparent Liability.* On February 28, 2020, the Commission issued the *AT&T NAL* proposing a \$57,265,625 fine against AT&T for its apparent willful and repeated violation of section 222 of the Act and section 64.2010 of the Commission's CPNI Rules for failing to have reasonable protections in place to prevent unauthorized access to customer location information. In the *AT&T NAL*, the Commission also admonished AT&T for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it.

16. On May 7, 2020, AT&T filed a response to the *NAL*.⁶² AT&T makes a number of arguments as to why the *NAL* should be withdrawn and cancelled. AT&T argues that location information is not CPNI and thus is not subject to the Act and the Commission's CPNI Rules, and that even if it was, the Company did not have fair notice that it would be classified as CPNI.⁶³ AT&T also argues that it acted reasonably both pre- and post-publication of the *New York Times* article. The Company claims that the LBS program had reasonable protections in place before the *New York Times* article, and that the Company's response to the article, including its months-long continuation of the LBS program, was likewise reasonable.⁶⁴ Finally, AT&T argues that the forfeiture amount is arbitrary and capricious.⁶⁵

III. DISCUSSION

17. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁶⁶ section 1.80 of the Commission's rules,⁶⁷ and the Commission's *Forfeiture Policy Statement*.⁶⁸ When we assess forfeitures, section 503(b)(2)(E) requires that the Commission take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶⁹ We have fully considered AT&T's *NAL* Response, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore affirm the \$57,265,625 forfeiture proposed in the *NAL*.

⁵⁹ See *NAL*, 35 FCC Rcd at 1755-56, para. 29 & n.111 (citing Supplemental LOI Response at 2, Response to Question 1).

⁶⁰ See *NAL*, 35 FCC Rcd at 1755-56, para. 29 (citing Supplemental LOI Response at 2, Response to Question 1; Further Response, LBS Chart Attachment); *NAL* Response at 34.

⁶¹ See *NAL*, 35 FCC Rcd at 1756, para. 29 (citing Supplemental LOI Response at 1-2, Introduction); *NAL* Response at 34.

⁶² See *NAL* Response.

⁶³ *NAL* Response at 4-17.

⁶⁴ *NAL* Response at 17-35.

⁶⁵ *NAL* Response at 35-40.

⁶⁶ 47 U.S.C. § 503(b).

⁶⁷ 47 CFR § 1.80.

⁶⁸ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁶⁹ 47 U.S.C. § 503(b)(2)(E).

A. Location Information is CPNI

18. As the *NAL* explained in more detail, the customer location information disclosed in AT&T's LBS program is CPNI under the Act and our rules.⁷⁰ Section 222 defines CPNI as "information that relates to the quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁷¹ The customer location information used in AT&T's LBS program falls squarely within this definition. AT&T's arguments to the contrary⁷² are largely reiterations of arguments the Commission considered and found unpersuasive in the *NAL*. Consistent with the analysis of location data found in the *NAL*, we remain persuaded that the location data at issue here constitute CPNI.

19. *First*, the customer location information at issue here relates to the location of a telecommunications service—i.e., AT&T's commercial mobile service.⁷³ As fully explained in the *NAL*:

A wireless mobile device undergoes an authentication and attachment process to the carrier's network, via the closest towers. After a mobile device is authenticated and logically attached to a wireless network, it may be (1) connected (sending/receiving data/voice) or (2) idle. In either state, the carrier must be aware of and use the device's location in order for it to enable customers to send and receive calls. AT&T is therefore providing telecommunications service to these customers whenever it is enabling the customer's device to send and receive calls—regardless of whether the device is actively in use for a call.⁷⁴

20. We conclude that the location information at issue here meets the first prong of the CPNI definition under either of two alternative interpretations. For one, we believe that the relevant statutory language is best read as referring to "information that relates to the . . . location, . . . of a telecommunications service"⁷⁵ That interpretation accords with the "rule of the last antecedent," which suggests that the term "of use" in section 222(h)(1)(A) modifies only "amount," as opposed to the preceding terms such as "location."⁷⁶ Our interpretation also better squares with the broader operation of section 222. If the language "of use" modified every term in the preceding list, it would lead to apparently anomalous results. For instance, although the phrase "amount of use of a telecommunications service" plainly refers at least to the number and length of telephone calls, it is not clear what "technical configuration of use" would mean. And our interpretation squares more readily with section 222(d)(1), which preserves carriers' ability to use CPNI to "initiate" service⁷⁷—an event that, aspects of which, ordinarily occur before the service is in "use."

21. The location information at issue here readily fits within that interpretation of the first prong of the CPNI definition. AT&T's customers can access the commercial mobile service to which they subscribe over a broad geographic area, and their location at a given point in time—and the fact of AT&T's ability to use its network to determinate that location—is reasonably understood as associated

⁷⁰ See *NAL*, 35 FCC Rcd at 1757-59, paras. 33-41.

⁷¹ 47 U.S.C. § 222(h)(1)(A) (emphasis added).

⁷² See *NAL* Response at 5-11.

⁷³ See 47 U.S.C. § 332(c)(1) (providing that "a person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter"), (d)(1) (defining "commercial mobile service").

⁷⁴ See *NAL*, 35 FCC Rcd at 1757, para. 35.

⁷⁵ 47 U.S.C. § 222(h)(1)(A).

⁷⁶ See, e.g., *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (the rule of the last antecedent "provides that 'a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows'").

⁷⁷ 47 U.S.C. § 222(d)(1).

with or a reference to the location of the AT&T telecommunications service.⁷⁸ Consequently, consistent with our assessment in the *NAL*,⁷⁹ we find this to be information that “relates to” the location of AT&T’s telecommunications service within the meaning of the first prong of the CPNI definition.⁸⁰

22. In the alternative, even if the term “of use” modified “location,” we still conclude the information at issue fits within the first prong of the definition of CPNI. AT&T does not dispute the *NAL*’s explanation that customers’ devices and AT&T’s network regularly exchange information as necessary for customers to send and receive calls.⁸¹ To the extent that AT&T contends that this does not represent use of the telecommunications service because it merely enables the provision of that service, AT&T does not demonstrate why that is a fair characterization or why it would represent a meaningful distinction in any case. Consistent with the reasoning of the *NAL*,⁸² we believe that AT&T’s customers subscribe to its commercial mobile service to enable them to receive and transmit calls. When customers’ devices are exchanging communications with AT&T’s network, and thereby ensuring that they can receive incoming calls and place outgoing calls, we think that is a clear case of using the service to which they have subscribed, even outside the moments in time when they are engaged in calls.⁸³

23. Nor do AT&T’s arguments about the source and intended purpose of the location data at issue here persuade us to reach a contrary result. AT&T contends that the location data at issue here were generated via a different mechanism than is used to ensure connectivity to the network for purposes of commercial mobile service and certain other services, and that AT&T obtained them with the intent of using them for purposes of its LBS initiative, rather than its provision of commercial mobile service.⁸⁴ But nothing in the text of the first prong of the CPNI definition turns on the classification of the service or technology used to obtain the information, nor on the carriers’ stated intent in collecting it. So long as the information “relates to” one or more of the specified criteria, the other factors raised by AT&T do not matter. And as noted above, the information at issue here “relates to” the location of the

⁷⁸ See, e.g., *NAL*, 35 FCC Rcd at 1748, para. 11 (“AT&T provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on AT&T’s wireless network.”).

⁷⁹ See, e.g., *NAL*, 35 FCC Rcd at 1757, 1758, paras. 35, 38.

⁸⁰ See, e.g., *Collins Concise Dictionary*, Third Ed., at 1129 (HarperCollins Pub. 1995) (defining “relate” as, among other things, “establishing association (between two or more things) or (of something) to have relation or reference (to something else)”; *American Heritage Dictionary*, Third Ed., at 695 (Dell Pub. 1994) (defining “relate” as, among other things, “To bring into logical or natural association,” “To establish or demonstrate a connection between,” or “To have connection, relation, or reference”); *Merriam-Webster’s Collegiate Dictionary*, Tenth Ed., at 987 (Merriam-Webster Pub. 1994) (defining “relate” as, among other things, “to show or establish logical or causal connection between”); *The Oxford Paperback Dictionary & Thesaurus*, at 636 (Oxford Univ. Press 1997) (defining “relate” as, among other things, “connect in thought or meaning” or “have reference to”).

⁸¹ *NAL*, 35 FCC Rcd at 1757, para. 35.

⁸² See, e.g., *NAL*, 35 FCC Rcd at 1757, 1758, paras. 35, 38.

⁸³ Definitions of “use” appear sufficiently broad to encompass our understanding of the term in this scenario. See, e.g., *Collins Concise Dictionary*, Third Ed., at 1483 (HarperCollins Pub. 1995) (defining “use,” among other things, to mean “to put into service or action; employ for a given purpose”); *American Heritage Dictionary*, Third Ed., at 884 (Dell Pub. 1994) (defining “use,” among other things, to mean “To put into service; employ” and “To avail oneself of; practice”); *Merriam-Webster’s Collegiate Dictionary*, Tenth Ed., at 1301 (Merriam-Webster Pub. 1994) (defining “use,” among other things, to mean “to put into action or service: avail oneself of”); *The Oxford Paperback Dictionary & Thesaurus*, at 853 (Oxford Univ. Press 1997) (defining “use,” among other things, to mean “cause to act or serve for purpose; bring into service” and “exploit for one’s own ends”).

⁸⁴ *NAL* Response at 7. To the extent that AT&T assumes that the functionality used to obtain the location information for its LBS initiative was not itself a telecommunications service, we need not, and thus do not, address that here because our conclusions do not turn on that point.

telecommunications service (or to the location of use of that service), regardless of how AT&T obtained the information and how it planned to use the information.

24. We also are unpersuaded by AT&T's arguments that the location information covered by the first prong of the definition of CPNI is limited to call location information for voice calls based on what AT&T gleans from other language in section 222.⁸⁵ In addition to the *NAL*'s responses in this regard,⁸⁶ we conclude that the use of "location" in (h)(1)(A) as opposed to "call location information" in (d)(4) and (f)(1) must be given some significance.⁸⁷ All *location* information is protected as CPNI under (h)(1)(A). But carriers can disclose *call location* information for 911 purposes under (d)(4), which makes sense because 911 calls are *calls*. Nor would it have been irrational for Congress to expressly require opt-in consent for call location information in section 222(f)(1) if the definition of CPNI encompasses other forms of location information, as well. At the time the provision was enacted in 1999, Congress might reasonably have viewed call location information as obviously sufficiently sensitive to necessitate opt-in approval requirements while leaving it to the Commission's discretion whether to require opt-in approval for other location information, just as for other information falling within the definition of CPNI more generally. In addition, the Commission's references to "calls" in a prior order that was focused in significant part on data regarding customers' calls—and which did not purport to exhaustively address the application of section 222 to mobile wireless service—cannot reasonably be read as setting forth the outer bounds of the Commission's understanding of section 222.⁸⁸

25. *Second*, the location information at issue was obtained by AT&T solely by virtue of its customer-carrier relationship. The *NAL* explains this in more detail, but the crux of the matter is that:

AT&T provides wireless telephony services to the affected customers because they have chosen AT&T to be their provider of telecommunications service—in other words, they have a carrier-customer relationship. . . . AT&T's customers provided their wireless location data to AT&T because of their customer-carrier relationship with AT&T, ...⁸⁹

In sum, the *NAL* reasoned that "[a]lthough AT&T might also provide non-common-carrier services to the same customer," the customer provided the relevant data "by virtue of the carrier-customer relationship."⁹⁰

26. The *NAL* did not specify with precision the standard for applying the second prong of the CPNI definition, and although we elaborate further on some of its contours here, we likewise need not resolve that question with specificity because we find that prong met here under a range of possible approaches. We begin by observing that the second prong of the CPNI definition is focused on a "relationship"—namely, the "carrier-customer relationship."⁹¹ A relationship presumes associations

⁸⁵ See, e.g., *NAL* Response at 5-6.

⁸⁶ *NAL*, 35 FCC Rcd at 1758, para. 39.

⁸⁷ This interpretive approach is consistent with how the Commission has approached the interpretation of section 222 in other contexts in the past. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8084-85, para 32 (1998) (distinguishing the interpretation of different language in section 222(a), (c)(1), and (d)(1), given that, "[u]nder well-established principles of statutory construction, 'where Congress has chosen different language in proximate subsections of the same statute,' we are 'obligated to give that choice effect'").

⁸⁸ See generally *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609 (2013) (*2013 CPNI Declaratory Ruling*).

⁸⁹ See *NAL*, 35 FCC Rcd at 1757-58, para. 36.

⁹⁰ *NAL*, 35 FCC Rcd at 1758, para. 37.

⁹¹ 47 U.S.C. § 222(h)(1)(A).

involving at least two parties, and we conclude that it must be understood with that context in mind, rather than focused single-mindedly on one side of the relationship. Our accounting for the customer's viewpoint is also supported by the statutory text's focus on whether the information "is made available to the carrier by the customer"—rather than "obtained by the carrier"—"solely by virtue of the carrier-customer relationship."⁹² Thus, although AT&T suggests that its acquisition of the location information at issue here is in some technical sense distinct from, or does not depend exclusively on, the carrier-customer relationship,⁹³ we find that belied by the technical and marketplace realities here, as experienced by AT&T customers.

27. As the *NAL* explains, when a customer subscribes to AT&T's commercial mobile service, AT&T "enables the connection of a customer's device to its network for the purpose of sending and receiving calls, and the customer has no choice but to reveal that location to the carrier."⁹⁴ AT&T does not dispute that the carrier-customer relationship fully enables AT&T to obtain the location data at issue here. Although AT&T does contend that it "used distinct technological platforms to obtain location data for purposes of LBS lookups and voice services,"⁹⁵ it does not claim that a customer, having subscribed to its commercial mobile service, entered a separate agreement with AT&T for the provision of that location information—or that AT&T's voice customers had any way to avoid providing that information if they wanted to subscribe to AT&T's commercial mobile service. Under circumstances such as these, we conclude that the location information at issue from AT&T's commercial mobile service customers was "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁹⁶

28. Although we find that reasoning sufficient to resolve the application of the second prong of the CPNI definition, we independently conclude that the same decision is warranted even if we parse the matter more finely. As discussed in the *NAL*, for example, AT&T has sought to rely on the theory that its offering of bundled telecommunications service and information services take location data outside the purview of "CPNI."⁹⁷ But we are not persuaded that AT&T's inclusion of multiple services in a bundle—which includes one or more telecommunications services—takes the resulting *relationship* outside the scope of the "carrier-customer" relationship for the specific purposes of the CPNI definition. Nothing dissuades us that the purchase of telecommunications service alone was sufficient to obligate

⁹² 47 U.S.C. § 222(h)(1)(A). Insofar as AT&T refers at times to a question of whether it "received the relevant location information 'solely by virtue of' its voice telecommunications service," *see, e.g.*, *NAL* Response at 9, the focus on AT&T's "voice telecommunications service" neither reflects the statutory text regarding prong two of the CPNI definition nor does it appropriately account for these concepts underlying the statutory focus on a customer-carrier "relationship." To be sure, section 222(c)(1) is limited in scope to "a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service." 47 U.S.C. § 222(c)(1). But in that provision, the required nexus is just that the carrier receive or obtain the CPNI "by virtue" (not "solely by virtue") of its provision of a telecommunications service. In its *NAL* response, AT&T disputes whether the location information at issue meets the statutory definition of CPNI in section 222(h)(1)(A), *see NAL* Response at 5-11, but does not contend that, if it does meet that definition, section 222(c)(1) nonetheless should not be interpreted to apply here.

⁹³ *See, e.g.*, *NAL* Response at 8-11.

⁹⁴ *NAL*, 35 FCC Rcd at 1758, para. 40.

⁹⁵ *NAL* Response at 9.

⁹⁶ 47 U.S.C. § 222(h)(1)(A).

⁹⁷ *See, e.g., NAL*, 35 FCC Rcd at 1758, para. 37; *see also, e.g., NAL* Response at 9-11 (raising similar arguments). AT&T does not catalog all the various services included in its bundles, and given that at least some of the services identified by AT&T have been classified as information services under existing Commission precedent, we need not otherwise evaluate the possible classifications of all of AT&T possible service offerings for purposes of our analysis here.

AT&T's customers to make their location information available to AT&T,⁹⁸ and in evaluating the second prong of the CPNI definition in the past, the Commission has noted that a carrier's "unique position with respect to its customers" when the carrier pre-configures a mobile device to collect information can satisfy "the 'carrier-customer relationship' element of the definition of CPNI."⁹⁹ AT&T points out that section 153(51) of the Act provides that "[a] telecommunications carrier shall be treated as a common carrier under [the Act] only to the extent that it is engaged in providing telecommunications services."¹⁰⁰ But we are far from that scenario here, given the many necessary links to AT&T's telecommunications services for the CPNI definition to apply.¹⁰¹ For one, the protections of section 222(c) only apply with respect to "information that relates to" certain characteristics of "a telecommunications service subscribed to by any customer of" AT&T.¹⁰² And the information must have been provided by consumers in a manner that reflects the statutorily required nexus to AT&T's telecommunications service.¹⁰³ Our interpretation and application of section 222 thus accords with the text of both section 222 and section 153 of the Act, even if it does not reflect the policy that AT&T would prefer.¹⁰⁴

29. Finally, we reject AT&T's argument that because it also gathered location information from consumers who only subscribed to information services (e.g., tablets) and did not partake of telecommunications services, *none* of the location information has been gathered solely by virtue of the customer-carrier relationship.¹⁰⁵ Against the backdrop of the analysis above, that only bears on the status of the information from those specific, non-voice, customers. The *NAL*'s proposed forfeitures turn not on specific effects on specific customers individually but on AT&T's corporate practices as a whole with respect to the entities that received LBS data.¹⁰⁶ AT&T does not contend that the LBS data that it

⁹⁸ Consequently, this is not a situation where we are relying on a theory that the carrier-customer relationship was merely one of a "confluence of multiple factors"—including relationships beyond the carrier-customer relationship itself—that collectively were required for AT&T to obtain the location information at issue here. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1739 (2019) (In contrast to the statute at issue there, Congress "could have added 'solely' to indicate that actions taken 'because of' the confluence of multiple factors do not violate the law."); *cf. id.* (observing that "[o]ften, events have multiple but-for causes"). By contrast, information that carriers obtain independently from public records, for example, would not be information that the customer provided to the carrier solely by virtue of the carrier-customer relationship.

⁹⁹ 2013 CPNI Declaratory Ruling, 28 FCC Rcd at 9616, para 23.

¹⁰⁰ 47 U.S.C. § 153(51).

¹⁰¹ For similar reasons, we reject the suggestion that our approach regulates AT&T under section 222 based on the mere fact that it has the status of a telecommunications carrier, rather than being linked to its specific offering of telecommunications services. *See* NAL Response at 8, 10.

¹⁰² 47 U.S.C. § 222(h)(1)(A).

¹⁰³ 47 U.S.C. § 222(h)(1)(A).

¹⁰⁴ AT&T also argues that jurisdiction over this matter lies with the Federal Trade Commission. *See* NAL Response at 12-13. But as we have found here, the data in question is CPNI and therefore properly within the Commission's jurisdiction under section 222 of the Act. As explained in the *NAL*, the Commission has authority to bring action for violations of section 222 of the Communications Act and the CPNI Rules against providers of telecommunications services and providers of interconnected Voice over Internet Protocol services. *See NAL*, 35 FCC Rcd at 1747, para. 10 (citing 47 U.S.C. § 222; 2007 CPNI Order, 22 FCC Rcd at 6954-57, paras 54-59).

¹⁰⁵ *See* NAL Response at 9-10.

¹⁰⁶ In particular, the *NAL* did not propose forfeitures based on unauthorized disclosure of CPNI associated with particular customers—it proposed forfeitures based on allegations that AT&T failed to take reasonable steps to protect its customers' location information, with forfeitures proposed not on a per-customer basis but on the basis of the days in which AT&T allegedly did not have a reasonable policy in place for particular entities that received LBS data. *See, e.g., NAL*, 35 FCC Rcd at 1768-69, para. 76. And while *FTC v. AT&T Mobility LLC*, 883 F.3d 848 (9th Cir. 2018) (en banc), concluded that the common-carrier limitation on the FTC's authority is activities-based, rather than status-based, it also recognized that "there may be some overlap between the agencies' jurisdiction when the (continued....)

provided, directly or indirectly, to any of the entities associated with the proposed forfeitures in the *NAL* was limited exclusively to data from non-voice customers. Thus, the AT&T practices that formed the basis of the proposed forfeitures in the *NAL* included information from voice customers, which falls within the definition of CPNI for the reasons explained above.

30. The Commission therefore affirms its finding from the *NAL* that the location information at issue in the LBS program is CPNI.

B. AT&T Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act

31. We reject AT&T's claim that it lacked fair notice that its practices involving customer location information were subject to the Communications Act and potential penalties thereunder.¹⁰⁷ The language of section 222 demonstrates that customer location information is CPNI; AT&T's practices involving CPNI, including customer location information, therefore unquestionably are regulated under the Act and the Commission's CPNI Rules; and AT&T's failure to comply with the requirements of the Act and our rules, including the "reasonable measures" mandate of section 64.2010, foreseeably makes the Company liable for a forfeiture penalty under section 503 of the Act.

32. AT&T argues that the "proper vehicle" for the Commission to address carriers' LBS practices "would have been a rulemaking or other order with prospective-only application."¹⁰⁸ But the Commission is not limited to this option. When, as in this case, a carrier's conduct falls within an area subject to regulation by the Commission, it is well established that enforcement action is also a "proper vehicle" to adjudicate the specific bounds of what is lawful and what is not, subject to principles of fair notice.¹⁰⁹

33. Contrary to AT&T's assertion, the Commission is not required by principles of fair notice to "announce" that LBS data, in particular, meets the definition of CPNI under section 222 of the Act or the CPNI Rules before enforcing that statute and those rules with respect to those data.¹¹⁰ As the D.C. Circuit has explained, "[t]he fair notice doctrine, which is couched in terms of due process, provides redress only if an agency's interpretation is 'so far from a reasonable person's understanding of the

FCC's regulations of common carriers affect the non-common-carrier activities of those entities," observing that "[i]n the administrative context, two cops on the beat is nothing unusual." *Id.* at 862. Thus, our interpretation of section 222 is not at odds with the court's decision in *FTC v. AT&T Mobility*.

¹⁰⁷ See *NAL* Response at 14-17.

¹⁰⁸ *NAL* Response at 14.

¹⁰⁹ See, e.g., *City of Arlington, Texas v. FCC*, 569 U.S. 290, 307 (2013) (affirmatively stating that "Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication"); *Neustar, Inc. v. FCC*, 857 F.3d 886, 894 (D.C. Cir. 2017); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that "the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application") (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (stating that "the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency").

¹¹⁰ See *NAL* Response at 14 (referring to "the proper vehicle for announcing that [section 222 encompasses LBS location data]" and the punishment of AT&T "for conduct that preceded the announcement"). In any event, however, absolute specificity is not a prerequisite for enforcing a statute or regulation. See, e.g., *Lachman*, 387 F.3d at 56-57 (stating the "mere fact that a statute or regulation requires interpretation does not render it unconstitutionally vague," and that case law "do[es] not stand for the proposition that any ambiguity in a regulation bars punishment").

regulations that they could not have fairly informed the regulated party of the agency's perspective."¹¹¹ And, in general, fair notice principles require that a regulated party be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.¹¹²

34. Here, the Commission previously explained in the *2013 Declaratory Ruling* that it would not "set out a comprehensive list of data elements that pertain to a telecommunications service and satisfy the definition of CPNI and those data elements that do not."¹¹³ Thus, AT&T cannot reasonably have assumed that the fact a given scenario had not been expressly addressed by Commission rules and precedent meant it fell outside the scope of CPNI and the associated protections of section 222 and the Commission's implementing rules. To the contrary, the Commission has stated that "implicit in section 222 is a rebuttable presumption that information that fits the definition of CPNI contained in section 222(h)(1) is in fact CPNI."¹¹⁴ Moreover, even while declining to comprehensively identify CPNI, including in the case of location information, the Commission emphasized that "location information in particular can be very sensitive customer information."¹¹⁵ In addition, notwithstanding the fair notice claims it makes now, AT&T previously asserted to the Commission that it treated customer location information in an essentially equivalent manner to CPNI.¹¹⁶

35. Further, our conclusion that the location data at issue here fall within the definition of CPNI flows from the text of section 222 is consistent with the Commission's approach to interpreting that provision in prior precedent. As noted, CPNI is defined by statute, in relevant part, to include "information that relates to . . . the location . . . of a telecommunications service."¹¹⁷ That definition further directs us to evaluate whether the relevant information "is made available to the carrier by the customer solely by virtue of the carrier-customer relationship."¹¹⁸ Our interpretation of those provisions above relies on the statutory text, interpreted consistent with ordinary tools of statutory interpretation, and is consistent with prior Commission precedent.

36. Finally, AT&T had fair notice of its obligations with respect to CPNI under section 64.2010 of the Commission's rules. In pertinent part, that rule provides that "[t]elecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized

¹¹¹ *Mississippi Comm'n on Env'tl. Quality v. EPA*, 790 F.3d 138, 186 (D.C. Cir. 2015) (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998)); see also *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988) ("statutes cannot, in reason, define proscribed behavior exhaustively or with consummate precision").

¹¹² *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) ("In assessing forfeitures against regulated entities, the Commission is required to provide adequate notice of the substance of the rule. . . . The court must consider whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.") (internal quotations and citations omitted).

¹¹³ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹¹⁴ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14495-96, para. 167 (1999). Although the Commission was responding, in part, to a request for clarification from MCI regarding "laundering" of CPNI by virtue of transfers to affiliated or unaffiliated entities, it was not limited just to that scenario alone. See, e.g., *id.* at 14495, para. 166 (describing the MCI request for clarification being addressed as, among other things, "seek[ing] clarification that there is a rebuttable presumption that customer-specific information in a carrier's files was received on a confidential basis or through a service relationship governed by section 222").

¹¹⁵ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹¹⁶ See *NAL*, 35 FCC Rcd at 1758, para. 37 n.122.

¹¹⁷ 47 U.S.C. § 222(h)(1)(A); see also, e.g., *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9616, para. 22 n.48 (citing section 222(h)(1)(A) as "defining CPNI to include 'information that relates to the . . . location . . . of a telecommunications service subscribed to by any customer of a telecommunications carrier'").

¹¹⁸ 47 U.S.C. § 222(h)(1)(A).

access to CPNI.”¹¹⁹ Beyond “requir[ing] carriers to implement the specific minimum requirements set forth in the Commission’s rules,” to comply with section 64.2010, the Commission “further expect[s] carriers to take additional steps to protect the privacy of CPNI to the extent such additional measures are feasible for a particular carrier.”¹²⁰ The Commission granted carriers flexibility to incorporate the specific measures and practices that are consistent with their otherwise-existing “technological choices.”¹²¹ In the *2007 CPNI Order*, the Commission also explained, for example, that “a carrier that practices willful blindness” regarding unauthorized disclosure of CPNI likely “would not be able to demonstrate that it has taken sufficient measures” to discover and protect against such conduct.¹²² And in the same order, the Commission likewise identified the limitations of relying on “contractual safeguards” to address risks once CPNI has been disclosed outside the covered carrier.¹²³ Ultimately, while providing guidance regarding compliance with section 64.2010, the Commission also recognized that it was necessary to guard against providing bad actors “a ‘roadmap’ of how to obtain CPNI without authorization.”¹²⁴ This provides sufficient direction for AT&T to understand its obligations under the rule as relevant here.¹²⁵

37. Thus, AT&T could reasonably have ascertained that (1) any enumeration of CPNI data elements set out by the agency was not exhaustive; (2) the customer location information at issue would be found to meet the definition of CPNI; and (3) AT&T would be subject to forfeiture penalties for failing to protect that customer location information as required under section 222 and the Commission’s rules.¹²⁶

C. AT&T Failed to Take Reasonable Steps to Protect CPNI

38. AT&T violated section 222 of the Act and section 64.2010 of our rules by failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information.¹²⁷ While our rules recognize that companies cannot prevent all data breaches, the

¹¹⁹ 47 CFR § 64.2010(a).

¹²⁰ *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64.

¹²¹ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65; *see also, e.g., id.* at 6945-46, para. 34 (“we permit carriers to weigh the benefits and burdens of particular methods of possibly detecting pretexting,” which “will allow carriers to improve the security of CPNI in the most efficient manner”).

¹²² *2007 CPNI Order*, 22 FCC Rcd at 6946, para. 35.

¹²³ *2007 CPNI Order*, 22 FCC Rcd at 6952-53, para. 49.

¹²⁴ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65.

¹²⁵ AT&T cites *LabMD, Inc. v. FTC*, 894 F.3d 1221, 1235-36 (11th Cir. 2018), but we are not persuaded that case calls for more here. For one, that case deals specifically with requirements for cease-and-desist orders and injunctions. *See, e.g., LabMD*, 894 F.3d at 1234-35. Further, the requirements at issue in that case lacked the supplementing guidance providing greater clarity that we find present in the case of section 64.2010 of the Commission’s rules. *See, e.g., LabMD*, 894 F.3d at 1236 (explaining that the proposed court order “is devoid of any meaningful standard informing the court of what constitutes a ‘reasonably designed’ data-security program”). Separately, AT&T’s reliance on contractual safeguards and its failure to investigate key details that would ensure LBS providers only were engaging in authorized uses and disclosures of CPNI appears directly at odds with guidance the Commission has provided. Even where a regulation is amenable to different interpretations, courts have rejected ‘fair notice’ claims where the regulated entity did not comply with at least some viable interpretation of the requirement. *See, e.g., 21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 202 (D.C. Cir. 2003).

¹²⁶ We reject as inapposite AT&T’s argument that the Commission cannot rely on principles of deference to satisfy fair notice requirements. NAL Response at 16-17 (citing *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 158 (2012); *General Electric Co. v. EPA*, 53 F.3d 1324, 1334 (D.C. Cir. 1995); *Gates & Fox Co. v. Occupational Safety & Health Review Commission*, 790 F.2d 154, 156 (D.C. Cir. 1986)). As the analysis above indicates, we are not relying on deference as grounds for finding fair notice of an interpretation of the definition of CPNI for which fair notice would not otherwise exist.

¹²⁷ 47 CFR § 64.2010(a); *see also 2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64 (“We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.”).

rules require carriers to take reasonable steps to safeguard their customers' CPNI and discover attempts to gain access to their customers' CPNI. Further, as noted below, where an unauthorized disclosure has occurred—as here—the burden of production shifts to the carrier to offer evidence that it did have reasonable measures in place. Once the carrier offers some evidence of those safeguards, the rebuttable presumption falls away, and the Commission bears the burden of persuasion and must find by a preponderance of the evidence that the carrier's safeguards were unreasonable in order to find a violation of 47 CFR § 64.2010(a). AT&T contends that the Securus disclosures to Hutcheson did not constitute legal violations of section 222.¹²⁸ AT&T then claims that it acted reasonably to protect its customers' location information both before and after the Securus disclosure came to light.¹²⁹ AT&T also argues that the Commission improperly shifted the burden of proving that such protections were reasonable to AT&T.¹³⁰ We find AT&T's arguments unpersuasive.

1. AT&T's Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222

39. As an initial matter, we conclude that it was not just disclosures to Hutcheson that were unauthorized. Rather, Securus's entire location-finding service¹³¹ (as detailed in paragraphs 11-12, above) was predicated on unauthorized disclosures. Consistent with AT&T's own description of events, the program was outside the scope of not only its approved "Use Case," but also beyond any agreement with either Aggregator (and thus had not been reviewed by AT&T).¹³² AT&T conceded that it was unable to distinguish location requests unrelated to the authorized Use Case (which involved an inmate collect-calling service) because each Securus request included a customer consent record that was identical to the records received for the approved service.¹³³ And, to be clear, none of the "consent records" submitted in connection with the location-finding service evinced a consumer's actual opt-in consent. Therefore, every time Securus submitted a request for location information under the guise of its approved Use Case (a Use Case that required consumer consent) and AT&T provided the requested location information, a separate, unauthorized disclosure occurred.

40. AT&T attempts to avoid this conclusion by: (1) concentrating only on the disclosures made to Hutcheson, not on the overall Securus location-finding program;¹³⁴ and (2) trying to use section 222(c)(1)'s exception for disclosures that are required by law to shield itself.¹³⁵ This misses the larger point. Whether or not there was a legitimate law enforcement request for the information is irrelevant if AT&T did not satisfy its own obligations under section 222. AT&T provided the location information to Securus under Securus's false pretenses, and AT&T only did so because it took Securus at its word that

¹²⁸ See NAL Response at 18-21.

¹²⁹ See NAL Response at 25-35.

¹³⁰ See NAL Response at 18-25.

¹³¹ See NAL, 35 FCC Rcd at 1752-53, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

¹³² See LOI Response at 17, Response to Inquiry No. 8 ("AT&T never approved this [Securus] program and did not receive the government requests."); see also, e.g., NAL Response at 21 (contending that certain information relied upon in the NAL "at most," supported "the proposition that Securus sent Hutcheson location data for certain AT&T customers outside the scope of AT&T's approved use case").

¹³³ See NAL, 35 FCC Rcd at 1753, para. 23.

¹³⁴ See NAL Response at 24 (saying there is "no pattern of data breaches" and that it is "only isolated and dated incidents involving a single errant LBS provider (Securus) with a single bad customer (Hutcheson)").

¹³⁵ See NAL Response at 20 (relying on 47 CFR § 222(c)(1), which allows disclosure of CPNI "as required by law").

Securus had obtained opt-in consumer consent.¹³⁶ This means that AT&T did not review any law enforcement requests and likewise did not provide the information pursuant to a law enforcement request because AT&T did not know there *were* any law enforcement requests in the first place – legitimate or otherwise.¹³⁷ Separately and independently, there is no indication that the law enforcement requests were properly reviewed by Securus, as evidenced by the ready success of Hutcheson’s thinly veiled ruse.¹³⁸ Thus, the disclosures made to Hutcheson were doubly unauthorized under section 222(c)(1). First, Securus used the façade of their approved Use Case to hide the true purpose and destination of the request, resulting in AT&T’s unauthorized disclosure of location information to Securus. Second, Hutcheson likewise submitted blatantly fake requests to Securus under the guise of law enforcement, resulting in Securus’s unauthorized disclosure of location information to Hutcheson.¹³⁹ Despite AT&T’s arguments, the Company is clearly not “required by law” to disclose location information based on any and every pretense or unsupported request. Therefore, consistent with the *NAL*, we find that the Securus disclosures, including those made to Hutcheson, were unauthorized and AT&T was appropriately admonished in relation to such disclosures.

2. AT&T’s Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures

41. The Commission affirms the *NAL* and finds that AT&T failed to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information. As fully laid out in the *NAL*, the record not only shows that AT&T did not have reasonable

¹³⁶ AT&T’s attempt to distinguish whether “location lookups violated Securus’s contractual obligations to AT&T” from the question of whether there was a violation of section 222 thus is futile under the circumstances here. *See, e.g.*, *NAL* Response at 20. As the *NAL* explained, “[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers’ CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law.” *NAL*, 35 FCC Rcd at 1760, para. 37 n.141. Although the *NAL* noted that “AT&T does not appear to argue that situation is present here,” *id.*, the totality of the record persuades us that this is, in fact, the import of the facts and AT&T’s arguments here.

¹³⁷ *See* LOI Response at 17, Response to Inquiry No. 8 (“AT&T never approved this [Securus] program and did not receive the government requests.”); *NAL* Response at 20 (stating that “Securus enabled law enforcement officials—without AT&T’s knowledge—to access customer location data” in a manner that “violated Securus’s contractual obligations to AT&T”). *See also NAL*, 35 FCC Rcd at 1752-53, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, *N.Y. Times* (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, *Riverfront Times* (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>). It is not reasonable to interpret AT&T as having been relying on a third party to disclose information as required by law where AT&T neither knew or approved of the third party doing so.

¹³⁸ *See* Hutcheson Sentencing Memo at 3-4 (explaining that after uploading documents that were blatantly not legal authorizations, location information was immediately transmitted with no intervening time for any documents to be reviewed for validity); *NAL*, 35 FCC Rcd at 1753, para. 21 (describing Hutcheson’s uploading of documents that were blatantly not legal authorizations in order to obtain location information). As the *NAL* explained, “AT&T does not deny the existence of the Securus location-finding service nor the abuse of that system by Hutcheson.” *NAL*, 35 FCC Rcd at 1753, para. 22. AT&T likewise does not dispute here that Hutcheson was, as a general matter, able to access location data by providing documents that were blatantly not legal authorizations as described in the *NAL* and confirmed in the Hutcheson Sentencing Memo. It at most asserts that there conceivably might have been legal authorizations associated with the specifically-identified AT&T customers, *see NAL* Response at 20-21, but does provide any reason to believe that Securus (let alone AT&T) could have or would have made that assessment before providing the location data.

¹³⁹ *See* Hutcheson Sentencing Memo at 3-4 (Hutcheson “uploaded legally defective search warrants that either did not authorize the acquisition of location data, were unsigned, or had no connection to the targeted phone user” and in “most of these instances . . . even notarized his own signature.”); *see also NAL*, 35 FCC Rcd at 1753, para. 21.

protections in place prior to 2018 *New York Times* article detailing the Securus/Hutcheson breaches,¹⁴⁰ but also that AT&T failed to promptly address its demonstrably inadequate CPNI safeguards after Securus/Hutcheson disclosure.¹⁴¹

42. AT&T attempts to excuse its unreasonable practices by cataloging the steps it did take before and after the *New York Times* article. AT&T argues that, prior to the Securus disclosure, its efforts exceeded the CTIA Guidelines for ensuring customer consent to the use of location data.¹⁴² Specifically, AT&T states that its safeguards included: (1) vetting each LBS provider and aggregator; (2) predicated access to location data on individualized preapproval of each LBS provider and each LBS Use Case; (3) limiting a number of LBS providers' access to specific location data even for consenting customers; (4) imposing exceptionally detailed information-security requirements on all LBS providers and aggregators; (5) reviewing customer-consent records daily; and (6) conducting audits and assessments to monitor and strengthen its controls.¹⁴³

43. The safeguards that AT&T had in place before the Securus disclosure were not reasonable. As fully explained in the *NAL*:

[The CTIA] guidelines focus on best practices for notice and consent by location-based service providers. But they do not include best practices recommendations for carriers that sell access to their customers' location information to location-based service providers. For example, they do not offer guidance to carriers on how to assure that location-based service providers comply with a contractual obligation to access location information only after furnishing proper notice and receiving customer consent.¹⁴⁴

As for the other safeguards that AT&T implemented to protect its customers' location information against unauthorized access, these safeguards relied almost entirely upon contractual agreement, passed on to location-based service providers through an attenuated chain of downstream contracts.¹⁴⁵ To enforce these safeguards, AT&T would have needed to take steps to determine whether they were actually being followed. Further, AT&T would have had to have a way of distinguishing between a legitimate request for customer location information (i.e., made pursuant to valid consumer consent) and an illegitimate one (i.e., the Securus/Hutcheson requests absent valid customer consent). Although the Commission requested that AT&T describe its efforts to verify that LBS providers obtained valid customer consent for related location requests,¹⁴⁶ nothing that AT&T has provided shows that it made any meaningful efforts or that it could effectively distinguish between valid and unauthorized requests for location information. And any further claim by AT&T that its contractual safeguards were effective are undermined by the inexorable fact that after the Securus disclosure, AT&T was unable to "compel Securus to cooperate with [its] investigation."¹⁴⁷ As the Commission said in the *NAL*, if AT&T could not compel Securus to cooperate, "it cannot say that the same contract-based system actually protects customer location information from unauthorized access by other entities. [Securus's] . . . refusal [to cooperate] is further

¹⁴⁰ See *NAL*, 35 FCC Rcd at 1761-63, paras. 51-59.

¹⁴¹ See *NAL*, 35 FCC Rcd at 1763-77, paras. 60-70.

¹⁴² See *NAL* Response at 26.

¹⁴³ See *NAL* Response at 26.

¹⁴⁴ *NAL*, 35 FCC Rcd at 1762, para. 55.

¹⁴⁵ See *NAL*, 35 FCC Rcd at 1762-1763, paras. 53-59.

¹⁴⁶ See Letter from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau to Jeanine Poltronieri, Assistant Vice President, External Affairs, AT&T Services, Inc., Letter of Inquiry at 3, Question 5(e), (Sep. 13, 2018) (on file in EB-TCD-18-00027704).

¹⁴⁷ *NAL*, 35 FCC Rcd at 1764, para. 63.

evidence of the fact that AT&T disclosed CPNI to a third party over which it had little or no control or authority.”¹⁴⁸

44. Likewise, AT&T’s safeguards after the Securus disclosure were also unreasonable. AT&T became keenly aware of the inadequacy of its safeguards after the May 2018 *New York Times* article, and again after Securus’s resistance to AT&T’s subsequent investigation. Nonetheless, AT&T did not and cannot demonstrate that its safeguards were made reasonable in the months that followed the 2018 *New York Times* article. In fact, rather than promptly implementing reasonable safeguards, AT&T continued to sell access to its customers’ location information under (for all intents and purposes) the *same system* that was exploited by Securus and Hutcheson.¹⁴⁹ Although AT&T worked towards implementing an enhanced notice and consent mechanism, this mechanism was never deployed.¹⁵⁰ According to AT&T, the mechanism was never deployed because AT&T decided to shut down its LBS program altogether—in the wake of a report of yet another LBS provider’s systems being misused.¹⁵¹ But the mere fact that AT&T was working on new processes is not sufficient to satisfy its obligation to “take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.”¹⁵² Until the new measures actually are in place, they cannot enable a carrier to “discover and protect against” the harms that are the target of that rule—and thus, they cannot be relied upon to satisfy that rule. Nor does the time and effort involved in AT&T’s work on new processes render the procedures that remained in place in the meantime “reasonable” under that rule, given their glaring weaknesses. The Commission has considered all of the data security measures that AT&T implemented in response to the Securus disclosure¹⁵³ and concludes that these measures were inadequate.

45. AT&T argues that the Commission “faults AT&T’s response [to the Securus disclosure] only because [the Commission] arbitrarily (1) ignores the consumer benefits of LBS services and the social costs of shutting them down and (2) all but ignores the substantial data security measures AT&T took in response to the Securus disclosure.”¹⁵⁴ We disagree. The issue here is not whether there are any beneficial services offered by LBS providers, but whether AT&T reasonably protected its customers’ location information. And even under AT&T’s reasoning, the Company would have no excuse for its failure to promptly terminate every other non-critical LBS provider. In any event, because of the sensitive personal information involved, the benefits of LBS must be weighed against the risks; here, the risks were grave, particularly because AT&T did not have a reliable way of confirming customer consent. The Commission considered AT&T’s arguments, but finds they are outweighed by these risks.

46. The *NAL* listed numerous steps that could have been taken to squarely address the proven vulnerability, up to and including deploying enhanced measures to verify consumer consent (even directly verifying consumer consent) and shutting down the LBS program.¹⁵⁵ Rather than taking definitive steps

¹⁴⁸ *NAL*, 35 FCC Rcd at 1764, para. 63.

¹⁴⁹ *See NAL*, 35 FCC Rcd at 1764, para. 60.

¹⁵⁰ *See NAL* Response at 30-32. In connection to implementing its enhanced notice and consent mechanism and ending its LBS program, AT&T argues that the *NAL* “pluck[ed] [a 30-day] deadline from thin air [and] it is arbitrary and capricious.” *Id.* at 32. The 30-day period cited in *NAL* was not a deadline but a grace period during which the Commission used its discretion and did not assess a fine. However, AT&T’s existing data security practices were unreasonable both before and after the May 2018 article—the article merely exposed those unreasonable practices. As such, the Commission could have assessed a fine *for every single day* such unreasonable practices were in place (both before and after the Securus/Hutcheson disclosures)—the 30 days provided AT&T with a grace period to either end the program or reform its practices.

¹⁵¹ *See NAL* Response at 33-34.

¹⁵² 47 CFR § 64.2010(a).

¹⁵³ *See NAL* Response at 25-35.

¹⁵⁴ *See NAL* Response at 26.

¹⁵⁵ *See NAL*, 35 FCC Rcd at 1765-66, paras. 67-69.

to remedy the obvious LBS program issues, AT&T instead took piecemeal steps. The Commission has fully considered all of the safeguards AT&T implemented after the Securus disclosure and has determined these safeguards to be inadequate because they did not rectify the systemic vulnerabilities at the heart of its LBS program—including relying on third parties to obtain customer consent for the disclosure of location information and failing to verify the validity of that consent.¹⁵⁶

3. AT&T Bore the Burden of Production

47. As an initial matter, the Commission notes that for the reasons discussed above and the analysis contained in the *NAL*, the preponderance of the evidence shows that AT&T did not use reasonable safeguards throughout the period of the violation.¹⁵⁷ As such, while the *NAL* discussed AT&T's burden of production to demonstrate that its protection of customer CPNI was reasonable,¹⁵⁸ that burden-shifting is not necessary given the preponderance of the evidence. Nonetheless, even if unnecessary to prove AT&T's violations in this matter, the *NAL* properly shifted the burden of production to AT&T.

48. First, as the *NAL* explained¹⁵⁹ and consistent with the *2007 CPNI Order*, where there is evidence of an unauthorized disclosure, the Commission will infer from that evidence that a carrier's practices were unreasonable unless the carrier offers evidence demonstrating that its practices were reasonable.¹⁶⁰ In the *NAL*, the Commission found that AT&T failed to demonstrate that its safeguards were reasonable following the disclosure of Securus's unauthorized location-finding service in May 2018.¹⁶¹

49. AT&T acknowledges that the *2007 CPNI Order*¹⁶² states that “where an unauthorized disclosure has occurred . . . the responsible carrier then shoulders the burden of proving the reasonableness of its measures to protect consumer data.”¹⁶³ However, AT&T is incorrect when it asserts that the *2007 CPNI Order* cannot support the burden-shifting approach in cases outside of the pretexting context. The *2007 CPNI Order* afforded adequate notice of the application of burden-shifting in this case. The order did not expressly limit burden-shifting to the pretexting context, instead applying more broadly to unauthorized disclosures of CPNI. The rationale applies with equal force to the kind of disclosure at issue here, where a fundamental issue is whether AT&T had reasonable measures to ensure that its customers had in fact consented to the disclosure of their CPNI. Indeed, the breach in the instant case is analogous to pretexting in that it involved fraud in order to obtain access to CPNI.¹⁶⁴ Broadly, in relation to Securus's entire unauthorized location-finding service, Securus used the pretext that it was requesting

¹⁵⁶ Although AT&T asserts that it worked towards implementing enhanced notice and consent mechanisms, those enhanced mechanisms were never deployed given AT&T's decision to shut down its LBS program altogether. See *NAL* Response at 30-32.

¹⁵⁷ See *NAL*, 35 FCC Rcd at 1761-66, paras. 51-69.

¹⁵⁸ See *NAL*, 35 FCC Rcd at 1746-47, 1761-62, and 1764, paras. 8, 52-53, and 62.

¹⁵⁹ See *NAL*, 35 FCC Rcd at 1746-47, para. 8.

¹⁶⁰ See *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 (noting that where there is evidence of an unauthorized disclosure, the Commission “will infer . . . that the carrier did not sufficiently protect that customer's CPNI” and that “[a] carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue”).

¹⁶¹ See *NAL*, 35 FCC Rcd at 1761-66, paras. 51-69.

¹⁶² See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 6927 (2007) (*2007 CPNI Order*).

¹⁶³ See *NAL* Response at 22 (citing *NAL*, 35 FCC Rcd 1746-47, 61-62, at paras. 8, 52).

¹⁶⁴ The breach at issue here arguably falls within the letter of criminal pretexting. See 18 U.S.C. § 1039.

location information from AT&T for its approved Use Case and that it had explicit customer opt-in consent for the disclosure. Likewise, Hutcheson used the pretext that he had legal authorization or consumer consent when requesting location information from Securus.¹⁶⁵ Therefore, applying the burden-shifting to this case is appropriate even to the extent that the disclosures here could be said not to have been pretexting of the same form described in the 2007 CPNI Order.

50. *Second*, AT&T admits that an evidentiary presumption is valid if the circumstances (here, a breach of CPNI) giving rise to that presumption make it “more likely than not” that the presumed fact (here, that CPNI safeguards were unreasonable) exists.¹⁶⁶ The Commission finds that the unauthorized disclosure in this case gave rise to a rebuttable presumption that AT&T did not reasonably protect customer location information from unlawful access.¹⁶⁷ As already discussed, the entire Securus location-finding program was based upon unauthorized disclosures. Though the disclosures to Hutcheson were particularly egregious (given they were essentially doubly unauthorized), *all* of the Securus requests made under the false guise of the approved Use Case and AT&T’s resultant disclosures of consumer location information were unauthorized. AT&T’s existing safeguards and oversight failed to notice and (absent the *New York Times* article) may have never realized that the unauthorized Securus location-finding program existed. Nonetheless, AT&T argues that the Commission cannot use the Securus and Hutcheson breaches (particularly as they occurred in 2014-2017) to support shifting the burden of production to the AT&T to provide evidence of the reasonableness of their post-May 2018 security practices.¹⁶⁸ Specifically, AT&T asserts that (1) there is no basis for concluding that LocationSmart or Securus actually committed a legal violation for which AT&T could be vicariously liable and (2) even if such violation was found, it could form no basis for presuming that AT&T responded unreasonably after the violation was found long after it occurred. We disagree.

51. In the *NAL*, we found that AT&T apparently violated section 222(c) of the Act and section 64.2007(b) of our rules in connection with its unauthorized disclosures of CPNI to Hutcheson.¹⁶⁹ This is further bolstered by the Department of Justice’s case against Hutcheson.¹⁷⁰ And though the Commission opted to admonish AT&T only for the unauthorized disclosures made to Hutcheson, it would have been appropriate to admonish AT&T for all the disclosures it made to Securus in relation to the unauthorized location-finding service. In the *NAL*, we clearly explained that, pursuant to section 217 of the Act,¹⁷¹ carriers cannot disclaim their obligations to protect customer CPNI by delegating those

¹⁶⁵ As explained in the *NAL*, “Hutcheson submitted thousands of unauthorized location requests via the Securus service between 2014 and 2017, in some cases ‘upload[ing] entirely irrelevant documents including his health insurance policy, his auto insurance policy, and pages selected from Sheriff training manuals’ in lieu of genuine legal process.” *NAL*, 35 FCC Rcd at 1753, para. 21; *see also supra* para. 12.

¹⁶⁶ *See NAL Response* at 23.

¹⁶⁷ *See 2007 CPNI Order*, 22 FCC Rcd at 6929, 6959, paras. 3, 63. A presumption is only permissible if there is “a sound and rational connection between the proved and inferred facts,” and when “proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact . . . until the adversary disproves it.” *Chemical Mfrs. Ass’n v. Department of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997) (quoting *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 788-89 (1990)) (internal citation and quotation marks removed).

¹⁶⁸ *See NAL Response* at 18-22.

¹⁶⁹ *See NAL*, 35 FCC Rcd at 1759-61, paras. 42-50. “The evidence reflects that Hutcheson used the Securus service to obtain the location information of AT&T customers. AT&T shared the information with LocationSmart, which then shared it with 3Cinteractive, which then shared it with Securus. *Id.* at 1759 at para. 43. “The evidence shows that between 2014 and 2017, at least 147 AT&T customers’ location information was disclosed to Hutcheson, via Securus, without the customers’ consent.” *Id.* at 1759 at para. 43.

¹⁷⁰ *See, e.g., Hutcheson Sentencing Memo*.

¹⁷¹ 47 U.S.C. § 217.

obligations to third parties.¹⁷² In its NAL Response, AT&T does not dispute that Hutcheson’s “location lookups violated Securus contractual obligations to AT&T.”¹⁷³ We reiterate here that “AT&T is not absolved from liability simply because it was not directly responsible for operating the programs under which unauthorized disclosures occurred.”¹⁷⁴ Further, section 222(c)(1) of the Act¹⁷⁵ makes the responsibility for avoiding unauthorized disclosures a carrier obligation and prohibits use and disclosure except in certain narrow circumstances, without any reasonableness criterion. AT&T should, therefore, be able to justify any unauthorized disclosure. Given that multiple breaches occurred here and that the “reasonable measures” obligation is a *continuing* obligation, the Commission’s application of an evidentiary presumption based upon the disclosures involving Hutcheson and the imposition of a burden to produce evidence of reasonable protections during the later violations period was reasonable—particularly because, as discussed, those safeguards did not materially change in the interim timeframe.¹⁷⁶

52. *Third*, AT&T misinterprets the *NAL* when it argues that the Commission improperly shifted the burden of persuasion to the Company.¹⁷⁷ To the contrary, the Commission properly (and consistent with APA precedent) shifted only the burden of *production*, and not the burden of *persuasion*, to AT&T. The unauthorized disclosure at issue gave rise to a rebuttable presumption that AT&T did not adequately protect customer information from unlawful access. The burden of production then shifted to AT&T to offer evidence that it had reasonable safeguards in place.¹⁷⁸

¹⁷² See *NAL*, 35 FCC Rcd at 1747, para. 9. Under section 217, “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.” 47 U.S.C § 217.

¹⁷³ See *NAL* Response at 20. AT&T argues that Hutcheson’s unauthorized location lookups, which they concede violated Securus’s legal obligations to AT&T including safeguarding its customers’ CPNI, did not violate the Act or the Commission’s rules because “section 222(c)(1) expressly authorizes information-sharing “required by law.”” *Id.* We find AT&T’s argument unavailing. Although AT&T speculates that some of the lookups may have had a law enforcement basis, those lookups were certainly not submitted through the appropriate channels for law enforcement requests, and AT&T cannot now claim that they were “required by law” when it did not treat them as such in the first place. Further, as explained in the *NAL*, “Securus did not . . . assess the adequacy of the purported legal authorizations submitted by users of its location-finding service.” *NAL*, 35 FCC Rcd at 1752, para. 20.

¹⁷⁴ See *NAL*, 35 FCC Rcd at 1759, para. 45; see also *id.* at 1760, para. 47 n.141 (explaining that where a carrier makes disclosures to a third party where the third party is not acting on behalf of the carrier to fulfill the relevant responsibilities of the carrier under section 222, the carrier’s disclosure of CPNI to the third party would be unauthorized in violation of section 222(c)(1)).

¹⁷⁵ 47 U.S.C. § 222(c)(1).

¹⁷⁶ We thus reject AT&T’s claim that burden-shifting based on the Securus disclosures makes no sense when the issue is the reasonableness of AT&T’s procedures years after those disclosures. See *NAL* Response at 24-25. As we explain above, the procedures AT&T actually employed—rather than the unimplemented processes it worked on developing—are what matters for assessing compliance with section 64.2010 of the rules. Since the procedures AT&T actually employed did not materially change from the time of the Securus disclosure through the time periods at issue here, the reasonableness of the procedures employed at the time of the Hutcheson disclosure remain fully relevant—and thus shifting the burden of production based on unauthorized disclosures under those procedures is logically consistent. In addition, the disclosures made to Hutcheson are not the only unauthorized disclosures. Disclosures made pursuant to Securus’s unauthorized program are all unauthorized, and both pre- and post-dated any disclosures made to Hutcheson.

¹⁷⁷ See *NAL* Response at 22-25.

¹⁷⁸ We note that in some instances—most notably with regard to various audits that implicated the LBS program and over which AT&T asserted privilege—AT&T claimed to have taken certain reasonable steps, but did not produce documentary evidence of those steps. See *NAL*, 35 FCC Rcd at 1751-52, paras. 18-19.

53. Rather than taking reasonable steps to safeguard its customers' location information after the Securus/Hutcheson disclosures were reported,¹⁷⁹ AT&T placed its customers' location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers' location information. For these reasons, we conclude that AT&T failed in its obligation under section 222 and our rules to have reasonable measures in place to discover and protect against attempts to gain unauthorized access to its customers' CPNI.

D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent

54. After considering the evidence in the record, the relevant statutory factors, the Commission's *Forfeiture Policy Statement*, and the arguments advanced by AT&T in the NAL Response, we find that AT&T is liable for a total forfeiture of \$57,265,625 for its violations of section 222 of the Act and section 64.2010 of the Commission's rules.¹⁸⁰ As explained in the *NAL*, this total results from applying a base forfeiture of \$40,000 for the first day of each such violation and a \$2,500 forfeiture for the second and each successive day the violations continued (excluding the 30-day grace period granted by the Commission).¹⁸¹ The Commission found in the *NAL* that AT&T apparently engaged in 84 continuing violations—one for each ongoing relationship with a third-party LBS provider or aggregator that had access to AT&T customer location information more than 30 days after publication of the *New York Times* report—and that each violation continued until AT&T terminated the corresponding entity's access to customer location information.¹⁸² Using this methodology, the Commission found AT&T apparently liable for a total base forfeiture of \$45,812,500. Upon considering the nature of the violations and the risk of harm they posed to consumers, the Commission then applied a 25% upward adjustment to the base forfeiture amount, resulting in a total proposed forfeiture of \$57,265,625.¹⁸³

55. AT&T challenges these forfeiture calculations with three principal arguments. *First*, AT&T asserts that the *NAL* describes at most a single continuing violation, not 84 separate violations, and that the upward adjustment was based on the same factors used to determine the base forfeiture for these violations. As such, according to AT&T, the forfeiture exceeds the applicable statutory maximum and violates due process, and both the forfeiture and the upward adjustment are arbitrary and capricious.¹⁸⁴ *Second*, AT&T argues that because it did not engage in "willful or repeated" violations, it cannot be subject to a forfeiture penalty under section 503(b).¹⁸⁵ *Third*, AT&T claims that the Commission bore (and failed to meet) the burden of showing that each of the 84 third-party relationships upon which the forfeiture was based posed a significant threat of unauthorized access to AT&T customer location information.¹⁸⁶ For the reasons discussed below, we are not persuaded by any of these arguments and decline to cancel or reduce the forfeiture proposed in the *NAL*.

¹⁷⁹ Many of the possible reasonable steps were enumerated in the *NAL*. See *NAL*, 35 FCC Rcd at 1764-66, paras. 61-69.

¹⁸⁰ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

¹⁸¹ *NAL*, 35 FCC Rcd at 1778, para. 75.

¹⁸² *NAL*, 35 FCC Rcd at 1778-79, para. 76.

¹⁸³ *NAL*, 35 FCC Rcd at 1780, para. 79.

¹⁸⁴ *NAL Response* at 35-38, 37 n.29.

¹⁸⁵ *NAL Response* at 38.

¹⁸⁶ *NAL Response* at 39-40.

1. The Commission Reasonably Found that AT&T Engaged in 84 Continuing Violations That Warranted an Upward Adjustment

56. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against AT&T of up to \$204,892 for each day of a continuing violation, up to a statutory maximum of \$2,048,915 “for any single act or failure to act.”¹⁸⁷ According to AT&T, the NAL describes at most one continuing violation for which a penalty may be assessed—namely, the “fail[ure] . . . to have reasonable [data security] measures in place.”¹⁸⁸ AT&T asserts that because the NAL describes that failure in unitary terms, and because the NAL does not suggest that AT&T “should have tailored distinct safeguards to specific LBS providers,” the Commission can only find there to have been one continuing violation (subject to the \$2,048,915 penalty cap).¹⁸⁹ AT&T also claims that the NAL justifies the base forfeiture and the upward adjustment on the same factors and that doing so is arbitrary and capricious.¹⁹⁰ Thus, AT&T contends, the NAL’s finding of 84 separate continuing violations (one for each LBS provider or aggregator) constitutes an impermissible attempt to circumvent the statutory maximum set by Congress.

57. We reject these arguments. Neither section 503(b) nor the forfeiture guidelines in section 1.80 of the Commission’s rules speak to the application of the phrase “single act or failure to act,” or otherwise to the calculation of the number of violations, in the CPNI or data security context.¹⁹¹ Moreover, in calculating a proposed penalty under section 222, the Commission previously applied a methodology under which a systemic failure to protect customer information constituted significantly more than a single violation. In *TerraCom*, the Commission stated that “[e]ach document containing [proprietary information] that the Companies failed to protect constitutes a separate violation for which a forfeiture may be assessed.”¹⁹² The Commission further observed that “[e]ach unprotected document constitutes a continuing violation that occurred on each of the 81 days [until] the date that the Companies remedied the failure”¹⁹³

58. The Commission in *TerraCom* elected to ground its forfeiture calculation in the number of unprotected documents (which it “conservatively estimate[d]” as more than 300,000),¹⁹⁴ but that approach was not mandated under section 503, section 222, or the Commission’s rules. Similarly, in this case, the Commission reasonably exercised its authority to find that each unique relationship between AT&T and an LBS provider or aggregator represented a distinct failure to reasonably protect customer CPNI and therefore a separate violation of section 222 of the Act and section 64.2010 of the Commission’s rules.¹⁹⁵ Each such relationship relied upon a distinct and unique contractual chain (from

¹⁸⁷ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any 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 19-1325 (EB 2019).

¹⁸⁸ NAL Response at 36 (citing *Notice*, 35 FCC Rcd at 1766-67, para. 70).

¹⁸⁹ NAL Response at 36-37.

¹⁹⁰ NAL Response at 37 n.29.

¹⁹¹ 47 U.S.C. § 503(b); 47 CFR § 1.80(b).

¹⁹² *TerraCom*, 29 FCC Rcd at 13343, para. 50.

¹⁹³ *TerraCom*, 29 FCC Rcd at 13343, para. 50.

¹⁹⁴ *TerraCom*, 29 FCC Rcd at 13343, para. 52. The Commission’s investigation into apparent violations of consumer privacy requirements in *TerraCom* was resolved by a consent decree in which the companies admitted to violating sections 201(b) and 222(a) of the Act. See *TerraCom, Inc. and YourTel America, Inc.*, Order and Consent Decree, 30 FCC Rcd 7075 (EB 2015), para. 20.

¹⁹⁵ Because our approach adheres to the requirements of section 503 of the Act, we reject AT&T’s nondelegation and excessive fines clause arguments that were premised on the theory that the Commission was seeking to evade those requirements. See NAL Response at 37.

AT&T to the Aggregator, then from the Aggregator to the LBS provider) and was premised to involve a specific, individually-approved “Use Case” that had been reviewed and authorized by AT&T. Treating these separate channels for the disclosure of location information—each of which, although unique, suffered from the same fundamental vulnerabilities discussed in the *NAL* and above—as separate violations was thus rational and properly within the Commission’s discretion.

59. The approach taken in the *NAL* was not only reasonable, it was—contrary to AT&T’s claim that it led to a “stratospheric” penalty that was “astronomically higher” than the statutory maximum—eminently *conservative*, both in terms of the base forfeiture and the upward adjustment. With regard to the upward adjustment, section 503 of the Act requires the Commission to “. . . take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁹⁶ The plain language of the statute provides the Commission with broad discretion to assess proposed penalties based on the statutory factors, up to the statutory maximum. Moreover, section 1.80 of the Commission’s rules provides a list of possible factors the Commission may use when making a determination to adjust upward or adjust downward the base forfeiture.¹⁹⁷ These factors include, importantly, “egregious misconduct,” “substantial harm,” “repeated or continuous violation,” and “ability to pay/relative disincentive,” among others.¹⁹⁸ The Commission weighed these factors when making the determination that the base forfeiture in this case merited a substantial upward adjustment. AT&T’s conduct was egregious; revelations in the press about Securus’ hidden location information program led to a public outcry and prompted inquiries from members of Congress concerned about carriers’ apparent lack of control over highly sensitive location information.¹⁹⁹ Its failure to adequately protect CPNI for a protracted amount of time caused substantial harm by making it possible for “malicious actors to identify the exact locations of AT&T subscribers who belong to law enforcement, military, government, or other highly sensitive positions—thereby threatening national security and public safety”—a threat illustrated by reports that Hutcheson used location information to obtain the precise location of multiple Missouri State Highway Patrol officers on numerous occasions.²⁰⁰ The violations were continuous over an extended period of time and repeated with two Aggregators and multiple LBS providers. Finally, the Commission took into account AT&T’s status as a major telecommunications provider to determine what penalty, when applied, would adequately provide AT&T with the necessary disincentive to engage in similar conduct again in the future. These considerations, taken into account as the Commission lawfully exercised its statutory authority to weigh the relevant factors, justify the resulting upward adjustment. AT&T’s arguments to the contrary do not defeat Congress’s decision to grant the FCC the power to

¹⁹⁶ 47 U.S.C. § 503(b).

¹⁹⁷ 47 CFR § 1.80(b)(10), Table 3.

¹⁹⁸ *Id.*

¹⁹⁹ See e.g., Letter from Sen. Ronald L. Wyden, Senator, U.S. Senate, et al., to Joseph J. Simons, Chairman, Federal Trade Commission, and Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2019) (on file in EB-TCD-18-00027704) (this Congressional was signed by 15 United States senators); Letter from Rep. Frank J. Pallone, Jr., Chairman, U.S. House of Representatives Committee on Energy and Commerce, to Ajit Pai, Chairman, Federal Communications Commission (Jan. 11, 2019) (on file in EB-TCD-18-00027704); Maria Dinzeo, *Class Claims AT&T Sold Their Real-Time Locations to Bounty Hunters*, Courthouse News Service (July 16, 2019), <https://www.courthousenews.com/class-claims-att-sold-their-real-time-locations-to-bounty-hunters/>; Brian Barrett, *A Location-Sharing Disaster Shows How Exposed You Really Are*, Wired (May 19, 2018), <https://www.wired.com/story/locationsmart-securus-location-data-privacy/>; Press Release, New America’s Open Technology Institute, *Privacy Advocates Call on FCC to Hold Wireless Carriers Accountable for Selling Customer Location Information to Third Parties Without Consent* (June 14, 2019), <https://www.newamerica.org/oti/press-releases/privacy-advocates-call-fcc-hold-wireless-carriers-accountable-selling-customer-location-information-third-parties-without-consent/> (announcing that New America’s Open Technology Institute, the Center on Privacy & Technology at Georgetown Law, and Free Press had filed a complaint with the FCC regarding the sale and disclosure of customer location information by AT&T, Verizon, T-Mobile, and Sprint).

²⁰⁰ *NAL*, 35 FCC Rcd at 1780, para. 79.

weigh the factors and make such adjustments “as justice may require.”²⁰¹ Nor do AT&T’s arguments persuade us that the 25% upward adjustment, which is relatively modest compared to upward adjustments in other cases involving consumer harms,²⁰² was unwarranted.

60. Turning to the per-LBS provider violations, as described in the *NAL*, AT&T’s practices placed the sensitive location information of *all* of its customers at unreasonable risk of unauthorized disclosure. As such, the Commission could well have chosen to look to the total number of AT&T subscribers when determining the number of violations (and under that analysis, the violations presumably would have continued until the very last LBS provider’s access to customer location information was cut off).²⁰³ Using that methodology—and taking into account the tens of millions of consumers whose highly sensitive location information was made vulnerable by AT&T—would have resulted in a significantly higher forfeiture than what was proposed in the *NAL*.

61. Furthermore, even under the framework applied in the *NAL*, the Commission could have calculated the proposed forfeiture based upon every single entity with access to AT&T customer location information up to the statutory maximum (\$204,892 per day up to \$2,048,915 for each and every LBS provider). That would have resulted in a far higher fine than the approach that was taken (applying a \$40,000 forfeiture for the first day of the violation and a \$2,500 forfeiture for each successive day the violation continued). Instead, the Commission took a conservative approach, giving AT&T a 30-day grace period with no fines assessed, limiting the number of continuing violations to every day that each related LBS provider operated in the apparent absence of reasonable measures to protect CPNI and therefore left AT&T customers’ CPNI vulnerable to unlawful disclosure, and assessing a far lower fine per day for the continuing violations than it could have. This approach recognized the Commission’s need to show that such violations are serious and ensured the proposed forfeiture amounts act as a powerful deterrent for future failures to reasonably protect CPNI.

62. We also reject AT&T’s assertion that its due process rights were violated because it lacked fair notice that its LBS practices would potentially make it liable for a penalty in excess of the \$2,048,915 statutory maximum for a single continuing violation. Consistent with our earlier discussion of AT&T’s fair notice claims,²⁰⁴ we find that this argument lacks merit. Customer location information is CPNI that is subject to protection under section 222 of the Act and section 64.2010 of the Commission’s rules. AT&T knew, or should have known, that failing to reasonably protect CPNI carries with it significant potential penalties that may be associated with more than one violation. Indeed, the Commission has in the past proposed penalties for what could be viewed as a system-wide violation on a more granular basis that would yield higher penalties that would result from treating the violation as a single continuing violation.²⁰⁵ Independently, we observe that the penalties at issue here are governed by section 503 of the Act, with which we fully comply in our decision.²⁰⁶ As the D.C. Circuit has

²⁰¹ 47 U.S.C. § 503(b).

²⁰² See, e.g., *Scott Rhodes*, Forfeiture Order, 36 FCC Rcd 705, 728, at para. 54 (2021) (upward adjustment equaling 100% of base forfeiture amount on robocaller/spoofers who made targeted robocalls designed to harass victims); ; *John C. Spiller, et al.*, Forfeiture Order, 36 FCC Rcd 6225, 6257, at para. 59 (2021) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4671, at para. 25, 4674, at para. 33 (2018) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities).

²⁰³ Although it involved a data breach—and not, as in this case, an ongoing failure to maintain reasonable safeguards such that customer data were placed at unreasonable risk of unauthorized disclosure—*TerraCom* supports applying a customer-centric forfeiture calculation that takes into account the number of customers whose data were inadequately protected. See *TerraCom*, 29 FCC Rcd at 13343, para. 50.

²⁰⁴ See *supra* B.

²⁰⁵ See, e.g., *TerraCom*, 29 FCC Rcd at 13343, paras. 51-52.

²⁰⁶ 47 U.S.C. § 503.

recognized, where a statute specifies maximum penalties, the statute itself provides fair notice of all penalties within that limit.²⁰⁷

2. AT&T Willfully and Repeatedly Violated the Act and the Commission's Rules

63. AT&T asserts that it cannot be subject to a forfeiture penalty under section 503(b)(1)(B) of the Act because that provision applies only to “willful[] or repeated[]” violations.²⁰⁸ According to AT&T, because the *NAL* “describes at most a unitary continuing violation,” it does not allege any “repeated” failure to comply with statutory or regulatory requirements. And, AT&T claims, the violation cannot be “willful” because the *NAL* does not allege that AT&T acted in knowing violation of any requirement.

64. These arguments lack merit. The terms “willful” and “repeated,” as used in section 503(b) of the Act, do not have the restrictive meaning that AT&T would assign to them. As the Commission previously stated in *Midwest Radio-Television*:

... the word “willfully”, as employed in Section 503(b), does not require a showing that the [party] knew he was acting wrongfully; it requires only that the Commission establish that the licensee knew that he was doing the acts in question – in short, that the acts were not accidental (such as brushing against a power knob or switch).²⁰⁹

AT&T contends that “willful” should not be interpreted by reference to the definition in section 312(f) as the Commission has done previously, but instead should be interpreted to require “at least a knowing violation or reckless disregard of law, citing the Supreme Court’s decision in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007).²¹⁰ We find instead that the Commission’s historical approach to interpreting “willfully” in section 503(b) is on firmer footing than AT&T suggests. The Commission’s interpretation reflected in *Midwest Radio-Television*, which predated the enactment of section 312(f), was premised on interpretations from Commission precedent interpreting “willful” elsewhere in the Act and Commission rules, and a consideration of court cases from other fields, along with the legislative history of the then-recently enacted “willful[] or repeated[]” language of section 503(b).²¹¹ Although *Safeco* states that “where willfulness is a statutory condition of civil liability, we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well,” it also recognizes that “‘willfully’ is a ‘word of many meanings whose construction is often dependent on the context in which it appears.’”²¹² Particularly given that *Midwest Radio-Television* was decided close in time to the enactment of the relevant language in section 503(b), and included an analysis of precedent interpreting willfulness as it had been used elsewhere in the Act previously,²¹³ that more highly relevant context persuades us to continue to follow the *Midwest Radio-Television Inc.* approach to interpreting “willfully” in section

²⁰⁷ *Pharon v. Bd. of Gov. of the Fed. Reserve*, 135 F.3d 148, 157 (D.C. Cir. 1998) (applying *BMW of North Am. v. Gore*, 517 U.S. 559 (1996), to a penalty assessed by the Board and concluding that the relevant statutory maximum penalty provisions provided adequate notice).

²⁰⁸ 47 U.S.C. § 503(b)(1)(B).

²⁰⁹ *Midwest Radio-Television Inc., Memorandum Opinion and Order*, 40 F.C.C. 163, 167, para. 11 (1963). See also *Playa Del Sol Broadcasters*, Order on Review, 28 FCC Rcd 2666, 2667-68, paras. 4, 6 (2013); *USA Teleport, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 6431, 6434, para. 9 (EB 2011)

²¹⁰ See *NAL Response* at 38 n.32.

²¹¹ *Midwest Radio-Television*, 40 F.C.C. at 1665-67, paras. 8-11.

²¹² *Safeco*, 551 U.S. at 57.

²¹³ *Midwest Radio-Television*, 40 F.C.C. at 166, para. 9.

503(b).²¹⁴ Separately and independently, however one might use the legislative history of section 312(f) to interpret section 312(f) itself, the relevant Conference Report indicates that the definitions enacted in section 312(f) were “consistent with the Commission’s application of those terms [“willfully” and “repeatedly”] in *Midwest Radio-Television Inc.*, 45 F.C.C. 1137 (1963).”²¹⁵ That can be seen as Congressional endorsement of the interpretations in *Midwest Radio-Television*, or at least more instructive than such legislative history otherwise commonly might be viewed.

65. Likewise, for the purposes of section 503, “repeated” only requires that a party acted (or failed to act) more than once or, if the act or failure to act is continuous, for more than one day.²¹⁶ In the present case, both are true—AT&T not only failed to meet its obligations to have reasonable protections of customer CPNI repeatedly with each LBS provider and Aggregator, but also failed to meet such obligations for more than one day. Thus, by continuing to operate its LBS program in the absence of reasonable safeguards, AT&T willfully and repeatedly violated section 222 of the Act and section 64.2010 of the Commission’s rules.

3. The Commission Rightfully Treated LBS Providers Equally for Purposes of Calculating Violations

66. AT&T also challenges the Commission’s finding that each and every LBS provider and aggregator relationship that AT&T left in place more than 30 days after the *New York Times* report involved a failure to reasonably protect CPNI. AT&T contends that, because some of these 84 entities were “well known and highly reputable” companies, they did not “pose a realistic data-security threat” and the Commission should not have treated them uniformly for purposes of determining the number of violations and calculating the proposed penalty.²¹⁷

67. We disagree. The exact level of threat posed by each LBS entity is both unquantifiable and beside the point. The Commission determined that the system of safeguards, under which these entities each operated pursuant to individual contracts and differing approved Use Cases, did not meet the reasonableness requirement of section 64.2010. Of particular significance is the fact that, at all times relevant to the violations period, AT&T still had not implemented a consent mechanism that would enable it to verify that a customer’s purported consent to the disclosure of location information was legitimate. As noted in the *NAL*, “[a]fter the Securus and Hutcheson breaches came to light, AT&T had good reason to doubt the accuracy of the consent records it received from *any* location-based service provider.”²¹⁸ The reputation of any particular third party is no substitute for implementing reasonable safeguards to protect customer location information that AT&T made available to that entity (and potentially its individual employees and contractors). Indeed, even “well known and highly reputable” companies such as AT&T

²¹⁴ As the Commission has noted, a federal district court decision declined to enforce the *Midwest Radio-Television* decision. See *Application For Review Of Southern California Broadcasting Company Licensee, Radio Station Kiev(Am) Glendale, California*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991) (referencing *U.S. v. Midwest Radio-Television, Inc.*, 249 F. Supp. 936, 937 (D. Minn. 1966)). However, that district court decision does not reflect any statutory analysis, nor does it otherwise grapple with the Commission and court precedent interpreting willfulness under other provisions of the Act and Commission rules, let alone any of the other considerations relied on in *Midwest Radio-Television*.

²¹⁵ H.R. Conf. Rep. 97-765, at 51, 1982 U.S.C.C.A.N. 2261, 2295 (Aug. 19, 1982).

²¹⁶ See, e.g., *Playa Del Sol Broadcasters*, Order on Review, 28 FCC Rcd 2666, 2668, para. 4 (2013); *Hale Broadcasting Corporation*, 79 FCC2d 169, 171, para. 5 (1980); *Midwest Radio-Television*, 40 F.C.C. at 168, paras. 15-16. Although AT&T contends that the Commission cannot find a repeated violation here, it does not offer any particular interpretation of the term “repeated.” See *NAL* Response at 38.

²¹⁷ *NAL* Response at 39-40.

²¹⁸ *NAL*, 35 FCC Rcd 1758, para. 39 (emphasis added).

are not immune to security threats posed by insiders.²¹⁹ Accordingly, we reject AT&T's argument that the Commission erred in finding 84 separate continuing violations for the 84 entities that AT&T continued to provide with access to customer location information.

E. Section 503(b) Is Employed Here Consistent With the Constitution

68. We reject AT&T's supplemental constitutional objections that: (1) the FCC combines prosecutorial and adjudicative roles in violation of constitutional due process requirements;²²⁰ (2) the issuance of a forfeiture order by the Commission would violate Article III and the Seventh Amendment;²²¹ and (3) the Commission's ability to choose a procedural approach to enforcement under section 503(b) of the Act is an unconstitutional delegation of legislative power.²²² AT&T's arguments are premised on misunderstandings regarding the relevant statutory framework, the nature of the Commission's actions, and relevant precedent.

69. As a threshold matter, AT&T neglects key aspects of the statutorily-mandated enforcement process applicable here. Pursuant to section 504 of the Act, after the Commission issues a forfeiture order, AT&T is entitled to a trial *de novo* in federal district court before it can be required to pay the forfeiture.²²³ AT&T's objection to the combination of prosecutorial and adjudicative roles in the FCC ignores that statutory entitlement to a trial *de novo* in federal district court to ultimately adjudicate its obligation to pay a forfeiture.²²⁴ Likewise, AT&T's claim that a forfeiture order issued under section 503(b) of the Act does not provide it a decision by an Article III court, including via a trial by jury, ignores AT&T's statutory right to a trial *de novo* before it can be required to pay the forfeiture.²²⁵ The statutory right to a trial *de novo* provided for by section 504 of the Act is itself sufficient grounds to reject those two constitutional claims.

²¹⁹ See *AT&T Services, Inc.*, Order and Consent Decree, 30 FCC Rcd 2808 (EB 2015) (resolving an investigation into unauthorized access to CPNI perpetrated by employees at three different AT&T call centers).

²²⁰ Letter from C. Frederick Beckner III, counsel to AT&T, to Michael Epshteyn and Rosemary Cabral,, Enforcement Bureau, FCC, EB-TCD-18-00027704, at 2 (filed June 22, 2023) (AT&T June 22, 2023 Supplemental NAL Response).

²²¹ AT&T June 22, 2023 Supplemental NAL Response at 2-3.

²²² AT&T June 22, 2023 Supplemental NAL Response at 3. AT&T also claims in passing that "[t]he Bureau's compulsory investigative process, in which targets are compelled to respond to often excessively broad requests for information—upon threat of additional enforcement action and without an appropriate opportunity to object or appeal—also raises serious due process concerns." *Id.* at 2 n.6. AT&T does not explain how, exactly, the investigatory process used by the Enforcement Bureau either here or more generally violates due process, however, nor how such concerns bear on the ultimate validity of the Commission's action in this forfeiture order. We thus reject that undeveloped claim as a reason not to proceed with a forfeiture order here.

²²³ 47 U.S.C. § 504(a); see also, e.g., *Ill. Citizens Comm. for Broadcasting v. FCC*, 515 F.2d 397, 405 (D.C. Cir. 1974) (noting that "a jury trial was available" in an action to collect a forfeiture). That AT&T theoretically might elect to pay the forfeiture voluntarily does not diminish its statutory right to a trial *de novo* in federal district court.

²²⁴ See, e.g., *Concrete Pipe & Prods. of Cal. v. Construction Lab. Pension Trust for S. Cal.*, 508 U.S. 602, 618 (1993) ("Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator to 'conduct a *de novo* review of all factual and legal issues.'").

²²⁵ Cf. *Executive Benefits Insurance Agency v. Arkinson*, 573 U.S. 25, 38-40 (2014) (where a claim raised before a bankruptcy court implicates the judicial power under Article III of the constitution, the bankruptcy court can make proposed findings of fact and conclusions of law for *de novo* review by a federal district court, and even if a bankruptcy court adjudicates such a claim itself, *de novo* review of that decision by a federal district court resolved any Article III concern); *Crowell v. Benson*, 285 U.S. 22, 50-65 (1932) (even in the case of private rights, an agency can make factual findings and render an initial decision of law subject to *de novo* review of issues of jurisdictional fact and of law in an Article III court).

70. Independently, there are sufficient grounds to reject AT&T's arguments for other reasons, as well. We discuss each of these in turn below.

71. *Combination of Functions.* With respect to AT&T's claimed due process violation,²²⁶ AT&T fails to demonstrate sufficient grounds for concluding that a combination of functions in the Commission's enforcement process here renders it constitutionally suspect, even apart from AT&T's failure to account for the trial *de novo* under section 504 of the Act. It is true that "a 'fair trial in a fair tribunal is a basic requirement of due process,'" but objections in that regard premised on the combination of functions in an agency "must overcome a presumption of honesty and integrity in those serving as adjudicators."²²⁷ To overcome that presumption requires "a showing of conflict of interest or some other specific reason for disqualification."²²⁸

72. AT&T fails to demonstrate a concern specific to the Commission's forfeiture order here sufficient to overcome the presumption of honesty and integrity. Insofar as AT&T notes the existence of pending due process claims premised on the combination of functions involving another agency, we are not persuaded to treat those still-pending unadjudicated arguments as warranting the conclusion that there is a genuine due process concern here.²²⁹

73. AT&T also expresses concerns that the Commission "(1) affords the respondents no hearing before an ostensibly neutral ALJ in any NAL-based proceeding; (2) does not wall itself off from enforcement staff when adjudicating such a proceeding; and (3) can impose massive financial penalties at the conclusion of its administrative case."²³⁰ But these broad-brush objections do not identify specific reasons that a reasonable adjudicator in the Commission's position would be biased in this proceeding—certainly not one sufficient to overcome the background presumption of honesty and integrity on the part of agency adjudicators. To the contrary, the first of AT&T's concerns would, in large part, turn that background presumption on its head by a requiring a presumption of bias whenever the Commission issued an NAL. Such an understanding would be at odds with the range of scenarios where courts have found no due process concerns with adjudication by individuals despite earlier involvement in a matter.²³¹

²²⁶ AT&T June 22, 2023 Supplemental NAL Response at 2.

²²⁷ *Withrow v. Larkin*, 421 U.S. 35, 46, 47 (1975); see also, e.g., *id.* at 47-48 (discussing *FTC v. Cement Institute*, 333 U.S. 683 (1948), where the Court found no due process violation based on the adjudicators' prior investigations, including stated opinions about the legality of certain pricing systems, because "[t]he fact that the Commission had entertained such views as the result of its prior ex parte investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of the respondents' basing point practice" and in the adjudication at issue "members of the cement industry were legally authorized participants in the hearings" and submit evidence and arguments in defense of their positions); *In re Zdravkovich*, 634 F.3d 574, 579 (D.C. Cir. 2011) ("In *Withrow v. Larkin*, the Supreme Court expressly rejected the claim that due process is violated where '[t]he initial charge or determination of probable cause and the ultimate adjudication' are made by the same agency."); *Ethicon Endo-Surgery v. Covidien*, 812 F.3d 1023, 1029-30 (Fed. Cir. 2016) (observing that "[l]ower courts have also rejected due process challenges to systems of adjudication combining functions in an agency," and collecting illustrative cases).

²²⁸ *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); see also, e.g., *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 881 (2009) (the due process inquiry is "whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'").

²²⁹ See AT&T June 22, 2023 Supplemental NAL Response at 2 (citing the pending constitutional challenge involving the FTC underlying *Axon Enterprise v. FTC*, 143 S. Ct. 890 (2023), as well as other pending challenges in the Fifth Circuit and the U.S. District Court for the District of Columbia).

²³⁰ AT&T June 22, 2023 Supplemental NAL Response at 2.

²³¹ For example, the Supreme Court in *Withrow v. Larkin* observed that "judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact," and "the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court," noting also that "a hearing examiner who has recommended findings of fact after rejecting certain evidence as not being probative was not disqualified to preside at further hearings that were required when reviewing courts (continued....)

74. As to AT&T's second concern, both the Communications Act²³² and the Administrative Procedure Act²³³ require formal separation of personnel in specific circumstances not present here, and the Supreme Court has cautioned against requiring agencies to follow procedures beyond those specified by statute.²³⁴ Particularly against the backdrop presumption of honesty and integrity on the part of agency adjudicators, AT&T identifies nothing specific to this case that would persuade us to depart from Congress' assessment of when formal separation of personnel is required.

75. Nor does the third concern cited by AT&T persuade us that due process concerns are present here. The potential to adopt forfeitures—even substantial forfeitures—that would be paid into the U.S. Treasury does not create a risk of financial bias on the part of reasonable adjudicators in the Commission's position.²³⁵ We also are not persuaded that the Commission's decision to issue an NAL proposing even a significant forfeiture is likely to create the risk of bias in the Commission's subsequent decision regarding a forfeiture order. Although the Supreme Court has stated in the context of criminal prosecutions that “there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case,” we find even a significant proposed forfeiture materially distinguishable from the imposition of criminal penalties—particularly the death penalty.²³⁶ For example, we are not persuaded that the Commission's decision to propose a forfeiture in an NAL creates the same degree of risk of an adjudicator becoming “psychologically wedded” to that proposal as in the case of a prosecutor's decision to authorize prosecutors to seek the death penalty, nor does AT&T provide evidence that is the case here.²³⁷ We also do not find that the NAL-initiated enforcement process presents the risk of adjudicators acting on the basis of extra-record information or impressions of the respondent that the Court found of concern in the

held that the evidence had been erroneously excluded.” *Withrow v. Larkin*, 421 U.S. at 48-49 (internal quotation marks omitted). The Court's willingness to accept continued adjudicator participation even where final—not merely preliminary—decisions previously had been made by the adjudicators strongly supports our analysis here.

We are unpersuaded to rely on precedent cited by AT&T that does not grapple with the presumption of honesty and integrity on the part of agency adjudicators. In particular, in *Proper v. Dist. of Columbia*, a vehicle owner challenged a D.C. enforcement regime for “junk” cars, and given the subjectivity of the standard being applied, the court observed that because “[t]he officer to whom appeal may be made is the same officer who decides that the vehicle is ‘junk’ in the first place; . . . serious questions as to impartiality arise”—but without considering any presumption of honesty and integrity. 948 F.2d 1327, 1333-34 (D.C. Cir. 1991).

²³² 47 U.S.C. § 409.

²³³ 5 U.S.C. § 554.

²³⁴ See, e.g., *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 524 (1978).

²³⁵ See, e.g., *Ward v. Village of Monroeville*, 409 U.S. 57, 59-61 (1972) (“[T]he test is whether the [decisionmaker's] situation is one ‘which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . . ,’” and due process was violated where a mayor acted as an adjudicator and also obtained a portion of the fees and costs he imposed in that role, whereas due process was not violated where a mayor acted as an adjudicator but “the Mayor's relationship to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.”); *Brucker v. City of Doraville*, 38 F.4th 876, 884 (11th Cir. 2022) (“The fact that a judge works for a government, which gets a significant portion of its revenues from fines and fees, is not enough to establish an unconstitutional risk of bias on the part of the judge.”).

²³⁶ *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (finding a due process violation where the judge previously had been involved as a prosecutor in authorizing the prosecution to seek the death penalty).

²³⁷ See *Williams v. Pennsylvania*, 579 U.S. at 9 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty).

case of a criminal prosecutor then serving as a judge.²³⁸ In particular, section 503(b) requires a Commission NAL to “set forth the nature of the act or omission charged . . . and the facts upon which such charge is based,”²³⁹ and AT&T has not identified concerns about the decision here being premised on extra-record evidence obtained by the Commission or commissioners in the development of the NAL.

76. To the extent that AT&T purports to identify concerns about the neutrality of two specific commissioners, we reject those arguments, as well. In particular, AT&T contends that statements accompanying the NAL by then-Commissioner Rosenworcel and Commissioner Starks “criticized the NAL for not being punitive enough.”²⁴⁰ However, what is relevant for purposes of evaluating bias in an adjudicatory proceeding is whether “a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.”²⁴¹ Properly understood, the portions of the separate statements quoted by AT&T address a legal or policy issue—the methodology used to calculate the proposed forfeiture—along with the related issue of the Commission’s failure to gather facts that would have enabled it to calculate a forfeiture using a different methodology.²⁴² That does not reflect any prejudgment of the facts to be resolved in the adjudication resulting from the NAL—to the contrary, the commissioners’ statements demonstrate that they viewed the ultimate issues as unresolved at that time.²⁴³ We thus reject AT&T’s claims of a due process violation through our implementation of the section 503(b) NAL-based process here.

77. *Trial By Jury.* We also reject AT&T’s contention that adjudication of the violations at issue here may not constitutionally be assigned to a federal agency.²⁴⁴ The Seventh Amendment preserves “the right of trial by jury” in “Suits at common law, where the value in controversy shall exceed twenty dollars,”²⁴⁵ but the Seventh Amendment applies only to suits litigated in Article III courts, not to administrative adjudications conducted by federal agencies.²⁴⁶ In determining whether an adjudication involves an exercise of judicial power vested in the federal courts under Article III of the constitution, the

²³⁸ See *Williams v. Pennsylvania*, 579 U.S. at 9-10 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty and also citing *In re Murchison*, 349 U.S. 133, 138 (1955), which involved an individual acting in the role of both a grand jury and judge where similar concerns arose); see also, e.g., *Withrow v. Larkin*, 421 U.S. at 54 (explaining that “Murchison has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications”).

²³⁹ 47 U.S.C. § 503(b)(4).

²⁴⁰ AT&T June 22, 2023 Supplemental NAL Response at 2 (citing NAL, 35 FCC Rcd at 1778 (Statement of Commissioner Jessica Rosenworcel Dissenting) (*Rosenworcel Statement*) and NAL, 35 FCC Rcd at 1779 (Statement of Commissioner Geoffrey Starks Approving In Part and Dissenting In Part) (*Starks Statement*)).

²⁴¹ *Cinderella Career & Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970).

²⁴² See, e.g., *Rosenworcel Statement*, 35 FCC Rcd at 1778 (criticizing the proposed forfeiture as relying on “bureaucratic math to discount the violations of our privacy laws” leading to proposed forfeitures “that are too small relative to the law and the population put at risk”); *Starks Statement*, 35 FCC Rcd at 1779 (stating that “I strongly believe we should have determined the number of customers impacted by the abuses and based our forfeiture calculations on that data”).

²⁴³ See, e.g., *Rosenworcel Statement*, 35 FCC Rcd at 1778 (“[W]hen the FCC releases a Notice of Apparent Liability, it is just early days. The fines are not final until after the carriers that are the subject of this action get a chance to respond. That means there is still work to do . . .”); *id.* (observing that the NAL merely “proposes” certain fines); *Starks Statement*, 35 FCC Rcd at 1781-83 (repeatedly describing the forfeiture amounts as merely “proposed” in the NAL).

²⁴⁴ AT&T June 22, 2023 Supplemental NAL Response at 2-3.

²⁴⁵ U.S. Const. amend. VII.

²⁴⁶ See, e.g., *Oil States Energy Services v. Greene’s Energy Group*, 138 S. Ct. 1365, 1379 (2018); *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442, 455 (1977).

Supreme Court has distinguished between “public rights” and “private rights.”²⁴⁷ Congress has broad authority to “assign adjudication of public rights to entities other than Article III courts.”²⁴⁸ Examples of “public rights” litigation involving “cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact” include enforcement of federal workplace safety requirements,²⁴⁹ “adjudicating violations of the customs and immigration laws and assessing penalties based thereon,”²⁵⁰ adjudicating “whether an unfair labor practice had been committed and of ordering backpay where appropriate,”²⁵¹ and the grant or reconsideration of a grant of a patent.²⁵² That precedent confirms the constitutional validity of FCC adjudication of violations of the Communications Act, even setting aside the reality that AT&T does, in fact, have the right of a trial *de novo* under section 504 of the Act here. Through section 222 of the Communications Act, Congress “created new statutory obligations”²⁵³ designed to protect consumer privacy even as the communications marketplace became more open to competition,²⁵⁴ analogous to those previously identified as involving public rights. Congress further “provided for civil penalties” for violations of those obligations; and constitutionally could entrust to the Commission “the function of deciding whether a violation has in fact occurred” when deciding whether to issue a forfeiture order, bringing it well within the “public rights” framework of existing Supreme Court precedent.²⁵⁵

78. Relying on the Fifth Circuit’s decision in *Jarkesy*, AT&T contends that the forfeiture at issue here should fall within the “private rights” framework—requiring adjudication in an Article III court, with the right to a trial by jury—because the violations allegedly are analogous to common law negligence.²⁵⁶ Even on its own terms, however, *Jarkesy* did not deal with a claim that was analogized to common-law negligence.²⁵⁷ By contrast, the Supreme Court itself has held that an agency could conduct adjudications to enforce federal workplace-safety rules, even though workplace-safety disputes historically had been resolved through “common-law actions for negligence and wrongful death.”²⁵⁸ Given that Supreme Court precedent, we are not persuaded by AT&T’s attempt to implicate Article III

²⁴⁷ *Oil States*, 138 S. Ct. at 1373 (citation omitted).

²⁴⁸ *Id.*

²⁴⁹ *Atlas Roofing*, 430 U.S. at 450, 461

²⁵⁰ *Id.* at 451.

²⁵¹ *Id.* at 453.

²⁵² *Oil States*, 138 S. Ct. at 1373.

²⁵³ *Atlas Roofing*, 430 U.S. at 450.

²⁵⁴ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8064, para 1 (1998) (“Congress recognized, . . . that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.”).

²⁵⁵ *Atlas Roofing*, 430 U.S. at 450.

²⁵⁶ AT&T June 22, 2023 Supplemental NAL Response at 2-3 (citing *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022)). AT&T also cites Justice Thomas’ concurrence in *Axon*. *Id.* (citing *Axon*, 143 S. Ct. at 907 (Thomas, J., concurring)). However, as relevant here, Justice Thomas was critiquing existing Supreme Court precedent insofar as it had allowed agency adjudication subject to only deferential appellate court review. *Axon*, 143 S. Ct. at 906-09 (Thomas, J., concurring). We are not persuaded to alter our analysis based on one Justice’s non-controlling opinion, and we therefore continue to apply existing Supreme Court precedent as it bears on our analysis here.

²⁵⁷ *Jarkesy*, 34 F.4th at 455.

²⁵⁸ *Atlas Roofing*, 430 U.S. at 445.

and the Seventh Amendment based on asserted analogies to common-law negligence, even taking the Fifth Circuit's decision in *Jarkesy* on its own terms.

79. Separately, AT&T also quotes the statement in *Jarkesy* that “actions seeking civil penalties are akin to special types of actions in debt from early in our nation’s history which were distinctly legal claims.”²⁵⁹ In support of that statement, the Fifth Circuit cited the Supreme Court’s decision in *Tull v. United States*.²⁶⁰ In *Tull*, the government was pursuing a claim in federal district court seeking penalties and an injunction under the Clean Water Act and the district court had denied the defendant’s request for a jury trial.²⁶¹ But as the Supreme Court also has made clear, Congress can assign matters involving public rights to adjudication by an administrative agency “even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead.”²⁶² Thus, *Tull* does not address the question of whether Congress can assign the adjudication of a given matter to an administrative agency—it speaks only to the Seventh Amendment implications of a matter that is assigned to an Article III court. To the extent that the Fifth Circuit in *Jarkesy* treated *Tull* as standing for the proposition that causes of action analogous to common-law claims would, as a general matter, need to be adjudicated in Article III courts with a right to trial by jury, we are unpersuaded. As the Supreme Court has held in a post-*Tull* decision, “Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their resolution to a forum in which jury trials are unavailable.”²⁶³ We thus are unpersuaded by AT&T’s reliance on *Jarkesy*.²⁶⁴

80. *Nondelegation*. Finally, contrary to AT&T’s contention,²⁶⁵ the choice of enforcement processes in section 503(b) of the Act does not constitute an unconstitutional delegation of legislative power. Section 503(b)(3) and (4) of the Act gives the Commission a choice of two procedural paths when pursuing forfeitures: either the NAL-based path most commonly employed by the Commission—which we have used here—or a formal adjudication in accordance with section 554 of the Administrative Procedure Act before the Commission or an administrative law judge.²⁶⁶ Contrary to AT&T’s suggestion, this choice involves the exercise not of legislative power but of executive power. The choice of enforcement process reflected in section 503(b) does not require the Commission to establish general

²⁵⁹ AT&T June 22, 2023 Supplemental NAL Response at 3 (quoting *Jarkesy*, 34 F.4th at 454-55).

²⁶⁰ *Jarkesy*, 34 F.4th at 454-55 (citing *Tull v. United States*, 481 U.S. 412, 418-19 (1987)).

²⁶¹ *Tull*, 481 U.S. at 414-15.

²⁶² *Atlas Roofing*, 430 U.S. at 455.

²⁶³ *Granfinanciera v. Nordberg*, 492 U.S. 33, 52 (1989) (emphasis omitted). We also are unpersuaded by the Fifth Circuit’s decision in *Jarkesy* insofar as it interpreted *Granfinanciera* as establishing an additional prerequisite for a public right—namely, “when Congress passes a statute under its constitutional authority that creates a right so closely integrated with a comprehensive regulatory scheme that the right is appropriate for agency resolution.” *Jarkesy*, 34 F.4th at 453. But *Granfinanciera* involved a dispute between two private parties, rather than an enforcement action commenced by the government. *Granfinanciera*, 492 U.S. at 51. The *Granfinanciera* Court explained that it had previously applied the public-rights doctrine to sustain “administrative factfinding” in cases “where the Government is involved in its sovereign capacity,” but the Court distinguished such cases from “[w]holly private” disputes. *Id.* (citation omitted). It was in the context of private disputes—*i.e.*, “in cases not involving the Federal Government”—where the Court considered whether Congress “has created a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution.” *Granfinanciera*, 492 U.S. at 54. The Fifth Circuit in *Jarkesy* thus took that holding out of context when it applied it to claims where (as here) the government is involved in its sovereign capacity.

²⁶⁴ As AT&T notes, the government has petitioned for certiorari in the *Jarkesy* case. AT&T June 22, 2023 Supplemental NAL Response at 3 n.8; *see also* Petition for a Writ of Certiorari, SEC v. Jarkesy, No. 22-859 (filed Mar. 8, 2023).

²⁶⁵ AT&T June 22, 2023 Supplemental NAL Response at 3.

²⁶⁶ 47 U.S.C. § 503(b)(3), (4).

rules governing private conduct of the sort that might implicate potential concerns about unauthorized lawmaking, but instead involves the exercise of enforcement discretion that is a classic executive power.²⁶⁷

81. We also are unpersuaded by AT&T's reliance on the Fifth Circuit decision in *Jarkesy* to support its nondelegation concerns. In addition to questions about the merits of the Fifth Circuit's approach in that regard,²⁶⁸ even on its own terms, *Jarkesy* involved a scenario where the court found that "Congress offered *no guidance* whatsoever" regarding the statutory decision at issue.²⁶⁹ That is not the case here, however. Although section 503(b) alone does not expressly provide guidance regarding the choice of enforcement process, section 4(j) of the Act directs as a general matter that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."²⁷⁰ Nothing in section 503(b) precludes the applicability of these considerations to guide the Commission's choice of enforcement process there, and the Commission has interpreted section 4(j) as informing its decision regarding the procedural protections required in adjudicatory proceedings in other contexts in the past.²⁷¹ The circumstances here therefore are distinct from those in *Jarkesy* where "Congress offered *no guidance* whatsoever."²⁷²

IV. CONCLUSION

82. Based on the record before us and in light of the applicable statutory factors, we conclude that AT&T willfully and repeatedly violated section 222 of the Act²⁷³ as well as section 64.2010 of the Commission's rules²⁷⁴ by disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it and for failing to take reasonable steps to protect its customers' location information. We decline to withdraw the Admonishment or to cancel or reduce the \$57,265,625 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

83. 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, AT&T, Inc., **IS LIABLE FOR A**

²⁶⁷ See, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) ("[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch."); cf. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (noting that a federal prosecutor's decision not to indict a particular defendant "has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed'" (citation omitted); *United States v. Batchelder*, 442 U.S. 114, 121, 124, 126 (1979) (no violation of the nondelegation doctrine when Congress enacted two criminal statutes with "different penalties for essentially the same conduct" and gave prosecutors "discretion to choose between" the two statutes given that Congress had "informed the courts, prosecutors, and defendants of the permissible punishment alternatives available under each [statute]," and thereby "fulfilled its duty").

²⁶⁸ As discussed above, Supreme Court precedent supports our contrary analysis here, and as previously noted, the government has petitioned for certiorari in the *Jarkesy* case. See *supra* note 264.

²⁶⁹ *Jarkesy*, 34 F.4th at 462.

²⁷⁰ 47 U.S.C. § 154(j).

²⁷¹ See, e.g., *Procedural Streamlining of Administrative Hearings*, EB Docket No. 19-214, Report and Order, 35 FCC Rcd 10729, 10734, para. 14 (2020) (looking to the standards in section 4(j) to guide the decision regarding the conduct of adjudicatory proceedings on the basis of a written record without live testimony); *id.* at 10735-36, para. 18 (looking to the standards in section 4(j) to guide the decision regarding whether an adjudication should be heard by the Commission, one or more commissioners, or an ALJ).

²⁷² *Jarkesy*, 34 F.4th at 462.

²⁷³ 47 U.S.C. § 222.

²⁷⁴ 47 CFR § 64.2010.

MONETARY FORFEITURE in the amount of fifty-seven million, two-hundred and sixty-five thousand, six hundred and twenty-five dollars (\$57,265,625) for willfully and repeatedly violating section 222 of the Act and section 64.2010 of the Commission's rules.

84. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁷⁵ AT&T, Inc., shall send electronic notification of payment to Shana Yates, Michael Epshteyn, and Kimbarly Taylor, Enforcement Bureau, Federal Communications Commission, at shana.yates@fcc.gov, michael.epshteyn@fcc.gov, and kimbarly.taylor@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁷⁶

85. In order for AT&T, Inc. to pay the proposed forfeiture, AT&T, Inc. shall notify Shana Yates at Shana.Yates@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>. 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:²⁷⁷

- 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 159²⁷⁸ or printed CORES form²⁷⁹ 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).²⁸⁰ 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.

²⁷⁵ *Id.*

²⁷⁶ 47 U.S.C. § 504(a).

²⁷⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

²⁷⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁷⁹ 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>.

²⁸⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

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

87. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to David R. McAtee II, Senior Executive Vice President and General Counsel, AT&T, Inc., c/o Jonathan E. Nuechterlein, Esq., and C. Frederick Beckner III, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington, DC, 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of AT&T Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027704 (April 17, 2024)

Our smartphones are always with us, and as a result these devices know where we are at any given moment. This geolocation data is especially sensitive. It is a reflection of who we are and where we go. In the wrong hands, it can provide those who wish to do us harm the ability to locate us with pinpoint accuracy. That is exactly what happened when news reports revealed that the largest wireless carriers in the country were selling our real-time location information to data aggregators, allowing this highly sensitive data to wind up in the hands of bail-bond companies, bounty hunters, and other shady actors. This ugly practice violates the law—specifically Section 222 of the Communications Act, which protects the privacy of consumer data. The Commission has long recognized the importance of ensuring that information about who we call and where we go is not for sale. In fact, these enforcement actions—leading to \$200 million in fines—were first proposed by the last Administration. By following through with this order, we once again make clear that wireless carriers have a duty to keep our geolocation information private and secure.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of AT&T Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027704 (April 17, 2024)

For more than a decade, location-based service (LBS) providers have offered valuable services to consumers, like emergency medical response and roadside assistance. Up until the initiation of the above-captioned enforcement actions, LBS providers did so by obtaining access to certain location information from mobile wireless carriers like AT&T, Verizon, and T-Mobile. Then, in 2018, a news report revealed that a local sheriff had misused access to an LBS provider's services. That sheriff was rightly prosecuted for his unlawful actions and served jail time. Subsequently, all of the participating carriers ended their LBS programs. So our decision today does not address any ongoing practice.

This is not to say that LBS providers have ended their operations. They have simply shifted to obtaining this same type of location information from other types of entities. That is why I encouraged my FCC colleagues to examine ways that we could use these proceedings to address that ongoing practice. But my view did not prevail.

That brings us to the final Forfeiture Orders that the FCC approves today. Back in 2020, after the mobile wireless carriers exited the LBS line of business, the FCC unanimously voted to approve Notices of Apparent Liability (NALs) against the carriers. Even then, it was clear that at least one LBS provider had acted improperly. So I voted for the NALs so we could investigate the facts and determine whether or not the carriers had violated any provisions of the Communications Act.

Now that the investigations are complete, I cannot support today's Orders. This is not to say that the carriers' past conduct should escape scrutiny by a federal agency. Rather, given the nature of the services at issue, the Federal Trade Commission, not the FCC, would have been the right entity to take a final enforcement action, to the extent the FTC determined that one was warranted.

Here's why. Unlike the FTC, Congress has provided the FCC with both limited and circumscribed authority over privacy. Congress delineated the narrow contours of our authority in section 222 of the Communications Act. The services at issue in these cases plainly fall outside the scope of the FCC's section 222 authority. Indeed, today's FCC Orders rest on a newfound definition of customer proprietary network information (CPNI) that finds no support in the Communications Act or FCC precedent. And without providing advance notice of the new legal duties expected of carriers (to the extent we could adopt those new duties at all), the FCC retroactively announces eye-popping forfeitures totaling nearly \$200,000,000. These actions are inconsistent with the law and basic fairness. The FCC has reached beyond its authority in these cases.

According to the Orders, our CPNI rules now apply whenever a carrier handles a customer's location information—whether or not it relates to the customer's use of a “telecommunications service” under Title II of the Communications Act. Here, the location information was unrelated to a Title II service. The customer did not need to make a call to convey his or her location. In fact, the carrier could have obtained the customer's location even if the customer had a data-only plan for tablets. Yet the Order concludes that the carriers mishandled CPNI.

That cannot be right. Start with the definition of CPNI, which section 222 of the Communications Act defines as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.¹

¹ 47 U.S.C. § 222(h)(1)(A).

That definition has two key limitations. First, the information must be of a specific type. As relevant here, CPNI must “relate to” the “location ... of use of a telecommunications service.” Second, the information must have been obtained in a specific way. The customer must have made his or her location “available to carrier” and “solely by virtue of the carrier-customer relationship.”

Take the first limitation. By requiring that the location “relate” to the “use of a telecommunications service,” the statute covers a particular type of data known as “call location information”—namely, the customer’s location *while making or receiving a voice call*. Section 222 confirms this commonsense reading elsewhere when it expressly refers to “call location information.”² These statutory references to “call location information” would make no sense if Congress intended for CPNI to cover all location information collected by a carrier, irrespective of particular calls.

The FCC confirmed that “straightforward” interpretation in a 2013 Declaratory Ruling.³ The definition of CPNI, this agency held, encompassed “telephone numbers of calls dialed and received and the location of the device at the time of the calls.”⁴ The FCC also clarified that CPNI included “the location, date, and time a handset experiences a network event, such as a dialed or received telephone call [or] a dropped call.”⁵

Although the Orders claim CPNI was at play, they do not contend that “call location information” was disclosed. Nor could they. As the Orders concede, the carriers obtained their customers’ location whenever a customer’s device pinged the carrier’s cell site, even when the device was otherwise idle. No voice call was necessary for the carrier to obtain the customer’s location. In fact, the carrier could gather the customer’s location even if the customer did not have a voice plan. So, the “location” did not “relate to” the “use” of a “telecommunications service” in any meaningful sense.

Turning to the second limitation, it seems implausible to conclude that the carrier obtained the customer’s location “*solely* by virtue of the carrier-customer relationship,” as section 222 requires. True, many of these customers might have had voice plans, thereby creating a “carrier-customer relationship.” But any Title II relationship was, at most, coincidental. The carrier could have obtained the customer’s location even in the absence of a call, and even in the absence of a voice plan.

The massive forfeitures imposed in these Orders offend basic principles of fair notice. The FCC has never held that location information other than “call location information” constitutes CPNI. Nor has the FCC stated that a carrier might be liable under our CPNI rules for location information unrelated to a Title II service and collected outside the Title II relationship. So, even if we could proscribe the conduct at issue here through a rulemaking (and I am dubious that we could), it would be inappropriate and unlawful to impose the retroactive liability that these Orders do.

² 47 U.S.C. § 222(f)(1) (ordinarily requiring “express prior authorization of the customer” for carrier disclosure of “call location information”); 47 U.S.C. § 222(d)(4) (allowing, however, carrier disclosure of “call location information” in certain emergency situations).

³ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Red 9609, para. 22 (2013).

⁴ *Id.* at para. 22.

⁵ *Id.* at para. 25.

In the end, these matters should have been handled by the FTC. Our CPNI rules are narrow and do not cover every piece of data collected by an FCC-regulated entity. Besides, as the Communications Act makes clear, carriers are regulated under Title II only when they are engaged in offering Title II services.⁶ In situations where an FCC-regulated entity offers a Title I service, such as mobile broadband, the FTC is the proper agency to enforce privacy and data security practices under generally applicable rules of the road. I respectfully dissent.

⁶ 47 U.S.C. § 153(51) (“A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services ...”); *see also* *FTC v. AT&T Mobility LLC*, 883 F.3d 848, 863-64 (9th Cir. 2018) (holding that the FTC’s “common carrier” exemption to Section 5 of the FTC Act “bars the FTC from regulating ‘common carriers’ only to the extent that they engage in common-carriage activity”).

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of AT&T Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027704 (April 17, 2024)

Today, each of the major national mobile network operators faces a forfeiture for its purported failure to secure the confidentiality of its customer proprietary network information ('CPNI') as it relates to location information of network user devices. While the facts of each alleged violation are somewhat different, the enforcement calculation methodology used to arrive at the forfeitures is shared. Because I am concerned principally with that issue, together with what I view as a significant and undesirable policy upshot common across the actions that the Commission takes today, I will draft one dissent.

There is no valid basis for the arbitrary and capricious finding—enunciating in the Commission's erroneous rationale in *TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014) (*'TerraCom'*) and relied upon today—that a single, systemic failure to follow the Commission's rules (in that case, violations of sections 201(b) and 222(a) of the Act; here, a violation of section 64.2010 of the Rules) may constitute however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology. In *TerraCom*—which was resolved by consent decree and never proceeded to a forfeiture order—the Commission found that each customer record exposed by a single insecure data protection method (some 305,065 records) could be treated as having formed a separate and continuing violation. Here, the Commission purports to count individual location-based services providers ('LBS') and aggregators relied upon by each mobile network operator to arrive at its separate and distinct continuing violations.

Whether counting individual exposed customer records or LBS providers and aggregators, the clear effect of the Commission's arbitrary selection of a violation class used to increase the number violations emerging from a single act or failure to act of a regulatee alleged to be in violation of our rules is to exceed our section 503 statutory authority. Here it cannot credibly be argued that any of the mobile network operators, in operating an LBS/aggregator program, committed more than one act relevant for the purposes of forfeiture calculation. It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an "act" into its individual constituent parts, counting the members of whatever class of objects may be related to the alleged violation to arrive at whatever forfeiture amount suits a preordained outcome. In this case we exceed our statutory maximum forfeiture by a factor of, in some cases, dozens; in *TerraCom*, we asserted the right to exceed it by thousands.

What's more, the Commission ought to act prudentially here: even assuming, purely *arguendo*, that location-based CPNI were illicitly exposed, let us not forget that, at every moment, any of thousands of unregulated apps may pull GPS location information, Wi-Fi and Bluetooth signal strength, and other fragments of data indicating location from customer handsets at every moment the device is on. Indeed, this can be, and routinely is, accomplished even without consumer permission. By sending a strong market signal that any alleged violation of Commission rules regarding CPNI safekeeping (whether or not the rules actually were violated) can and will result in an outsize fine, we have effectively choked off one of the only ways that valid and legal users of consent-based location data services had to access location data for which legal safeguards and oversight actually exist.

It was available for the Commission to work with the carriers to issue consent decrees to promote best practices to develop further safeguards around location-based and aggregation services, and to actively monitor ongoing compliance in an effort to vouchsafe a regulated means of consensually sharing handset location data with legitimate users of the same. We opt, instead, to appear "tough on crime" in a way that actually reduces consumer data privacy by pushing legitimate users of location data toward unregulated data brokerage. Accordingly, I dissent.

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

In the Matter of	)	
	)	
Verizon Communications	)	File No.: EB-TCD-18-00027698
	)	NAL/Acct. No.: 202032170006
	)	FRN: 0003257094

FORFEITURE ORDER

Adopted: April 17, 2024

Released: April 29, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
A. Legal Background	2
B. Factual Background	8
III. DISCUSSION	21
A. Location Information is CPNI	22
B. Verizon Had Fair Notice That its LBS Practices Were Subject to Enforcement Under the Communications Act	35
C. Verizon Failed to Take Reasonable Steps to Protect CPNI	42
1. Verizon's Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222	43
2. Verizon's Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures	46
3. Verizon Bore the Burden of Production	59
D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent	66
1. Verizon Willfully Violated the Act and the Commission's Rules	69
2. The Commission Did Not Need to Find Unauthorized Access to CPNI During the Limitations Period	73
3. The Commission Reasonably Found that Verizon Engaged in 65 Continuing Violations	77
4. The Commission Will Reduce the Forfeiture Amount by \$1,417,500	83
5. The Upward Adjustment is Permissible and Warranted	87
E. Section 503(b) Is Employed Here Consistent With the Constitution	90
IV. CONCLUSION	101
V. ORDERING CLAUSES	102

I. INTRODUCTION

1. On February 28, 2020, the Commission issued a Notice of Apparent Liability for Forfeiture and Admonishment (*NAL*) against Verizon Communications (Verizon or Company).¹ In the *NAL*, the Commission admonished Verizon for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it, and proposed to fine Verizon

¹ *Verizon Communications*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1698 (2020) (*NAL*).

\$48,318,750 for failing to take reasonable steps to protect its customers' location information. After reviewing the Company's response to the *NAL*,² we find no reason to cancel or withdraw the proposed penalty. However, pursuant to additional factual evidence provided in Verizon's *NAL* Response that is relevant to the forfeiture calculation, we reduce the proposed penalty by \$1,417,500, and therefore impose a penalty of \$46,901,250 against Verizon.

II. BACKGROUND

A. Legal Background

2. As set forth fully in the *NAL*,³ carriers are required to protect the confidentiality of certain customer data related to the provision of telecommunications service. This includes location information, which is customer proprietary network information (CPNI) pursuant to section 222 of the Communications Act (Act).⁴ The Commission has advised carriers that this duty requires them to take "every reasonable precaution" to safeguard their customers' information.⁵ Section 222(a) of the Act imposes a general duty on telecommunications carriers to "protect the confidentiality of proprietary information" of "customers."⁶ Section 222(c) establishes specific privacy requirements for "customer proprietary network information" or CPNI, namely information relating to the "quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" and that is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁷ The Commission has promulgated regulations implementing section 222 (CPNI Rules), which require, among other things, that carriers employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."⁸

3. *Customer Consent to Disclose CPNI.* With limited exceptions, a carrier may only use, disclose, or permit access to CPNI with customer approval.⁹ Generally, carriers must obtain a customer's "opt-in approval" before disclosing that customer's CPNI.¹⁰ This means that a carrier must obtain the

² *Verizon Communications*, Response to Notice of Apparent Liability for Forfeiture and Admonishment (filed May 7, 2020) (on file in EB-TCD-18-00027698) (*NAL* Response or Response).

³ See generally *NAL*.

⁴ 47 U.S.C. § 222.

⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959, para. 64 (2007) (*2007 CPNI Order*).

⁶ 47 U.S.C. § 222(a).

⁷ 47 U.S.C. § 222(c), (h)(1)(A) (emphasis added). "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). The mobile voice services provided by Verizon are "telecommunications services." See 47 U.S.C. § 332(c)(1); H.R. Conf. Rep. No. 104-458 at 125 (1996) ("This definition [of 'telecommunications service'] is intended to include commercial mobile service.").

⁸ See 47 CFR § 64.2001 *et seq.*; *id.* § 64.2010(a). The CPNI Rules are a subset of, and are thus included within, the Commission's rules.

⁹ 47 U.S.C. § 222(c)(1) ("Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.") (emphasis added).

¹⁰ 47 CFR § 64.2007(b).

customer's "affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request" ¹¹

4. This opt-in requirement has been in place since 2007, when the Commission amended its rules in the *2007 CPNI Order* after finding that once carriers disclosed CPNI to third parties, including joint venturers and independent contractors, that information was out of the control of the carrier and had a higher risk of being improperly disclosed. ¹² Accordingly, among other things, this opt-in requirement was meant to allow individual consumers to determine if they wanted to bear the increased risk associated with sharing CPNI with such third parties. ¹³ In the Commission's view, obtaining a customer's express consent in these circumstances is particularly important, because a carrier cannot simply rectify the harms resulting from a breach by terminating its agreement with such a third party, "nor can the Commission completely alleviate a customer's concerns about the privacy invasion through an enforcement proceeding." ¹⁴ The Commission further concluded that contractual safeguards between a carrier and such a third party do not obviate the need for explicit customer consent, as such safeguards do not eliminate the increased risk of unauthorized CPNI disclosures that accompany information that is provided by a carrier to such a third party. ¹⁵ Thus, the Commission determined that, with limited exceptions, a carrier may only use, disclose, or permit access to CPNI with the customer's opt-in approval. ¹⁶

5. *Reasonable Measures to Safeguard CPNI.* The Commission has also recognized that an opt-in requirement alone is not enough to protect customer CPNI, especially in light of tactics like "pretexting," where a party pretends to be a particular customer or other authorized person in order to illegally obtain access to that customer's information (thus circumventing opt-in requirements). ¹⁷ Therefore, the Commission adopted rules requiring carriers to "take reasonable measures to *discover* and *protect* against attempts to gain unauthorized access to CPNI." ¹⁸ To provide some direction on how carriers should protect against tactics like pretexting, the Commission included in its amended rules customer authentication requirements tailored to whether a customer is seeking in-person, online, or over-the-phone access to CPNI. ¹⁹ It also adopted password and account notification requirements. ²⁰

6. The Commission made clear that the specific customer authentication requirements it adopted were "minimum standards" and emphasized the Commission's commitment "to taking resolute enforcement action to ensure that the goals of section 222 [were] achieved." ²¹ Although carriers are not expected to eliminate every vulnerability to the security of CPNI, they must employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI." ²² They must also take reasonable measures to protect the confidentiality of CPNI—a permanent and ongoing obligation to

¹¹ 47 CFR § 64.2003(k).

¹² *2007 CPNI Order*, 22 FCC Rcd at 6947-53, paras. 37-49. Prior to the *2007 CPNI Order* the Commission's rules had allowed carriers to share CPNI with joint venture partners and independent contractors on an opt-out basis for the purpose of marketing communications-related services to customers. *Id.* at 6931-32, para. 8.

¹³ *2007 CPNI Order*, 22 FCC Rcd at 6950, para. 45.

¹⁴ *2007 CPNI Order*, 22 FCC Rcd at 6949, para. 42.

¹⁵ *2007 CPNI Order*, 22 FCC Rcd at 6952, para. 49.

¹⁶ *See* 47 CFR § 64.2007(b).

¹⁷ *See 2007 CPNI Order*, 22 FCC Rcd at 6928, para. 1 & n.1.

¹⁸ 47 CFR § 64.2010(a) (emphasis added).

¹⁹ *See* 47 CFR § 64.2010(b)-(d).

²⁰ *See* 47 CFR § 64.2010(e)-(f).

²¹ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65.

²² 47 CFR § 64.2010(a).

police disclosures and ensure proper functioning of security measures.²³ As the Commission stated in the *NAL*, several government entities provide guidance and publish best practices that are intended to help companies evaluate the strength of their information security measures.²⁴

7. *Section 217.* Finally, the Act makes clear that carriers cannot disclaim their statutory obligations to protect their customers' CPNI by delegating such obligations to third parties. Section 217 of the Act provides that "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."²⁵

B. Factual Background

8. *Customer Location Information and Verizon's Location-Based Services Business Model.* Verizon provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on Verizon's wireless network.²⁶ As part of its business, Verizon ran a Location-Based Services (LBS) program until March 2019. Through the LBS program, Verizon sold access to its customers' location information to companies known as "location information aggregators," who then resold access to such information to third-party location-based service providers or in some cases to intermediary companies who then resold access to such information to location-based service providers.²⁷ Verizon had arrangements with two location information aggregators: LocationSmart and Zumigo (the Aggregators). Each Aggregator, in turn, had arrangements with location-based service providers. In total, Verizon sold access to its customers' location information (directly or indirectly) to 67 third-party entities (including the two Aggregators).²⁸

9. The Verizon LBS program was largely governed via contractual provisions that vested Verizon with oversight authority over the Aggregators. Verizon entered into contracts with the Aggregators, and the Aggregators then entered into their own contracts with various LBS providers. Verizon asserts that its LBS program was subject to a number of safeguards and that both the LBS providers and Aggregators had to satisfy various requirements, which were memorialized in and governed by contract

²³ See *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64 ("We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.").

²⁴ For example, the National Institute of Standards and Technology (NIST) is responsible for developing information security standards and guidelines, including minimum requirements for federal information systems. NIST publishes cybersecurity and privacy frameworks which feature instructive practices and guidelines for organizations to reference. The publications can be useful in determining whether particular cybersecurity or privacy practices are reasonable by comparison. The model practices identified in the NIST and other frameworks, however, are not legally binding rules, and we do not consider them as such here. The Federal Trade Commission (FTC), the FCC's Communications Security, Reliability, and Interoperability Council (CSRIC), and the Cybersecurity & Infrastructure Security Agency (CISA) also offer guidance related to managing data security risks. See NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1 (Apr. 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (NIST Cybersecurity Framework); NIST, The NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0 (Jan. 16, 2020), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf>; FTC, Start with Security: A Guide for Business, Lessons Learned from FTC Cases (June 2015), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>; Communications Security, Reliability and Interoperability Council, CSRIC Best Practices, <https://opendata.fcc.gov/Public-Safety/CSRIC-Best-Practices/qb45-rw2t/data>; CISA, Cross-Sector Cybersecurity Performance Goals and Objectives (last visited Aug. 17, 2022), <https://www.cisa.gov/cpgs>.

²⁵ 47 U.S.C. § 217.

²⁶ See Verizon Communications, 2021 Annual Report, <https://www.verizon.com/about/sites/default/files/2021-Annual-Report-on-Form-10-K.pdf>.

²⁷ The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *NAL*, 35 FCC Rcd at 1703-12, paras. 11-38.

²⁸ See *NAL*, 35 FCC Rcd at 1703-04, paras. 12-13.

provisions with the Aggregators.²⁹ According to Verizon, these provisions included various information security requirements, including implementing and maintaining multiple types of security controls, preventing unauthorized disclosures of Verizon's data, and compliance with consumer protection and data privacy laws and industry best practices.³⁰ Beyond these security provisions, which Verizon required the Aggregators to likewise hold the LBS providers to, the Aggregator-LBS provider contracts included provisions obligating the LBS providers to provide Verizon's customers with clear disclosure of the way their location information would be "accessed, used, copied, stored, or disclosed" by the location-based service provider and obtain "affirmative, opt-in consent" from Verizon customers or users "prior to accessing, using, storing or disclosing location information."³¹ This arrangement meant that it was typically the LBS providers who were obligated "to provide notice and obtain consent" from consumers—not the Aggregators or Verizon.³² Verizon had broad authority under its contracts to "terminate its relationship with each Aggregator for any material breach of contract terms, and it could terminate any arrangement that failed to meet Verizon's standards."³³

10. While Verizon did not have contracts with the LBS providers, each provider was required to submit an application that described, among other things, the "Use Case" or purposes for which it would use the location information, as well as the process it would use for providing notice and obtaining opt-in consent from a Verizon customer for use and sharing of the customer's location information.³⁴ Verizon claims that it only approved applications for one of six specific types of Use Cases: "call routing, roadside assistance, proximity marketing, transportation and logistics, fraud mitigation/identity management, and mobile gaming/lottery."³⁵

11. Verizon's approval process and ongoing monitoring involved a third-party Auditor, Aegis Mobile, LLC (Aegis).³⁶ According to Verizon, Aegis would "perform background checks on companies seeking access to location information before those companies were allowed to obtain it," and also "validate and reconcile the records of consent events and the records of each access to a subscriber's location on a daily basis."³⁷ Validation and reconciliation of requests for customer location information with the corresponding record of consumer consent was not always successful in the initial processing of data, and could vary greatly depending on which LBS provider was being checked (e.g., in a five and a half month time period, more than 50% of one LBS provider's transaction could not be reconciled in the first instance).³⁸ Verizon claimed that this was only the initial step of the consent validation process and that Aegis would follow-up "with the Aggregators or their [LBS] provider customers" and correct "misalignments in the data or performing other data operations," resulting in matching "99.95% of all

²⁹ See *NAL*, 35 FCC Rcd at 1704-05, paras. 14-16.

³⁰ See *NAL*, 35 FCC Rcd at 1705, para. 15; *NAL* Response at 18.

³¹ See *NAL*, 35 FCC Rcd at 1705, para. 14 (citing Response to Supplemental Letter of Inquiry from Verizon to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 8, Response to Question 4 (June 5, 2019) (on file in EB-TCD-18-00027698) (Supplemental LOI Response)).

³² See *NAL*, 35 FCC Rcd at 1704-05, para. 14 (citing Supplemental LOI Response at 8, Response to Question 4).

³³ *NAL*, 35 FCC Rcd at 1705, para. 16 (citations omitted).

³⁴ See *NAL*, 35 FCC Rcd at 1705-06, para. 17 (citing Response to Letter of Inquiry from Verizon to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 2, Response to Question 1 (Oct. 15, 2018) (on file in EB-TCD-18-00027698) (LOI Response)).

³⁵ *NAL*, 35 FCC Rcd at 1706, para. 17 (quoting LOI Response at 2, Response to Question 1).

³⁶ See *NAL*, 35 FCC Rcd at 1706-08, paras. 18-24.

³⁷ *NAL*, 35 FCC Rcd at 1706, paras. 18 & 19 (citations omitted).

³⁸ See *NAL*, 35 FCC Rcd at 1707, para. 20 (citing LOI Response at VZ-0000873, Response to Request for Documents No. 6).

records of location requests to the corresponding consent record,” followed by a spot-check of the remaining 0.05% records.³⁹

12. Verizon also asserted that Aegis’s “broader oversight program” had additional components, including looking at trends in data to identify larger areas of concern and using various methods “to ensure that the Aggregators (and their location-based service provider customers) were complying with their contractual obligations.”⁴⁰ According to Verizon, Aegis “applied fraud analytics techniques to refine its ability to broadly identify potential issues going forward”—but Verizon offered no examples of issues identified and addressed via such data analysis.⁴¹ Verizon also claims that Aegis reviewed LBS providers to make sure they were in compliance with their use case, notice, and consent requirements.⁴² In addition, Verizon says it reviewed and/or addressed “discrete issues as they were raised by Aegis or otherwise.”⁴³ For example, Verizon described an investigation into an allegation that a bail bonds company had obtained unauthorized access to Verizon consumers’ location data.⁴⁴ According to Verizon, the investigation concluded that the company was likely a rejected applicant to its LBS program and that the company was not receiving location information, but that “it is possible for [LBS] program companies with delegated consent to falsify consent records and obtain [Verizon] subscriber data without their consent.”⁴⁵ As the *NAL* explained, the “report made no recommendations for adopting additional methods to mitigate the risk of approved location-based service providers falsifying consent records to obtain Verizon customer location information without their consent.”⁴⁶

13. *Unauthorized Access and Use of Customer Location Information.* On May 10, 2018, the *New York Times* published an article that detailed security breaches involving Verizon’s (and other carriers’) practice of selling access to customer location information.⁴⁷ The *NAL* includes a more detailed summary of the article and its findings, but essentially the breaches involved a location-based service provider (Securus Technologies, Inc., or Securus) that offered a location-finding service to law enforcement and corrections officials that allowed such officials to access customer mobile device location *without* that device owner’s knowledge or consent.⁴⁸ Not only was Securus’s location-finding service outside the scope of its approved “Use Case” or any agreement with either Aggregator (and thus had not been reviewed and approved by Verizon), but despite Securus’s claims that the program required appropriate “legal authorization,” it did not verify such authorizations and its program was used and abused by a (now former) Missouri Sheriff (Cory Hutcheson) for non-law enforcement purposes and in the absence of any such legal authorization.⁴⁹ Securus obtained location services from a company called

³⁹ *NAL*, 35 FCC Rcd at 1707, para. 21 (citing Declaration of John A. Bruner, Jr., Aegis Mobile, LLC, paras. 5-6 (Feb. 21, 2020) (on file in EB-TCD-18-00027698) (Bruner Decl.)).

⁴⁰ *NAL*, 35 FCC Rcd at 1707-08, paras. 22-23 (citing Supplemental LOI Response at 4, 22, Response to Questions 1, 13; Bruner Decl. at para. 7).

⁴¹ *NAL*, 35 FCC Rcd at 1707-08, para. 22.

⁴² See *NAL*, 35 FCC Rcd at 1708, para. 23 (citing Supplemental LOI Response at 22, Response to Question 13).

⁴³ *NAL*, 35 FCC Rcd at 1708, para. 24 (quoting Supplemental LOI Response at 12, Response to Question 5).

⁴⁴ See *NAL*, 35 FCC Rcd at 1708, para. 24 (citing Supplemental LOI Response at 13, Response to Question 5).

⁴⁵ *NAL*, 35 FCC Rcd at 1708, para. 24 (citations omitted).

⁴⁶ *NAL*, 35 FCC Rcd at 1708, para. 24.

⁴⁷ See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

⁴⁸ See *NAL*, 35 FCC Rcd at 1708-09, paras. 25-26 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

⁴⁹ See *NAL*, 35 FCC Rcd at 1708-09, paras. 25-26 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) (continued....)

3Cinteractive, and 3Cinteractive obtained Verizon consumers' location information pursuant to a contract with the Aggregator LocationSmart.⁵⁰ Verizon conceded that its regular audits "did not reveal that Securus was using this data in ways that differed from its approved use case with LocationSmart."⁵¹

14. The Department of Justice's U.S. Attorney's Office for the Eastern District of Missouri charged Hutcheson with, among other things, wire fraud and illegally possessing and transferring the means of identification of others, and Hutcheson pleaded guilty on November 20, 2018.⁵² The Department of Justice's investigation of Hutcheson's actions included an examination of how the Securus location-finding service operated. Once Hutcheson became an authorized user of Securus's LBS software, he was able to obtain the location of specific mobile telephone devices.⁵³ In order to do so, users (including Hutcheson) were required to input the telephone number of the device they wanted to locate, and then "upload a document manually checking a box, the text of which stated, '[b]y checking this box, I hereby certify the attached document is an official document giving permission to look up the location on this phone number requested.'"⁵⁴ As soon as Hutcheson (or any other authorized user) submitted his request and uploaded a document, the Securus LBS platform would *immediately* provide the requested location information (regardless of the adequacy of the uploaded document).⁵⁵ Rather than "uploading the required legal process," Hutcheson instead "routinely uploaded false and fraudulent documents . . . , each time representing that the uploaded documents were valid legal process authorizing the location requests the defendant made."⁵⁶ Those "false and fraudulent documents" included "his health insurance policy, his auto insurance policy, and pages selected from Sheriff training materials."⁵⁷ Hutcheson "submitted thousands of Securus LBS requests and obtained the location data of hundreds of individual phone subscribers without valid legal authorization."⁵⁸

15. *Verizon's Response to the Securus Disclosures.* Verizon directed LocationSmart to terminate Securus's and 3Cinteractive's access to Verizon customer location information on May 11, 2018.⁵⁹ Following this termination, Verizon stated that it "undertook a review to better understand how [the Securus and Hutcheson breaches] could occur despite the contractual, auditing, and other protections" in had in place to protect customer location data.⁶⁰ Verizon says it determined that its auditing did not identify Securus's unauthorized program because Securus used the profile of its approved

<https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, Riverfront Times (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>).

⁵⁰ See NAL, 35 FCC Rcd at 1709, para 27 (citing Supplemental LOI Response at 15, Response to Question 7).

⁵¹ NAL, 35 FCC Rcd at 1709, para. 29 (citing LOI Response at 12, Response to Question 8).

⁵² See Press Release, U.S. Attorney's Office Eastern District of Missouri, *Mississippi County Sheriff Pleads Guilty to Fraud and Identity Theft, Agrees to Resign* (Nov. 20, 2018), <https://www.justice.gov/usao-edmo/pr/mississippi-county-sheriff-pleads-guilty-fraud-and-identity-theft-agrees-resign>.

⁵³ See Government's Sentencing Memorandum at 3, *United States v. Corey Hutcheson*, Case No. 1:18-CR-00041 JAR, Doc. No. 65 (E.D. Mo. Apr. 23, 2019) (Hutcheson Sentencing Memo), <https://storage.courtlistener.com/recap/gov.uscourts.moed.160663/gov.uscourts.moed.160663.65.0.pdf>; see also NAL, 35 FCC Rcd at 1708-09, paras. 25-26.

⁵⁴ Hutcheson Sentencing Memo at 3; see also NAL, 35 FCC Rcd at 1708-09, para. 25.

⁵⁵ See Hutcheson Sentencing Memo at 3-4; see also NAL, 35 FCC Rcd at 1708-09, para. 25.

⁵⁶ Hutcheson Sentencing Memo at 4; see also NAL, 35 FCC Rcd at 1709, para. 26.

⁵⁷ Hutcheson Sentencing Memo at 4; see also NAL, 35 FCC Rcd at 1709, para. 26.

⁵⁸ Hutcheson Sentencing Memo at 4; see also NAL, 35 FCC Rcd at 1709, para. 26.

⁵⁹ See NAL, 35 FCC Rcd at 1709, para. 28 (citing Supplemental LOI Response at 16, Response to Question 7).

⁶⁰ NAL, 35 FCC Rcd at 1709, para. 29 (citing LOI Response at 12, Response to Question 8).

Use Case, the number of Securus requests appeared normal, and nothing in Securus's background check changed such that the auditor would question Securus's credibility.⁶¹ Verizon also claimed to conduct a broader investigation, which the Company said "did not uncover any new incidents in which a Location Aggregator (or its customer) misrepresented that it had customer consent."⁶² However, through this investigation Verizon learned of a vulnerability whereby a cybersecurity researcher gained access "to Verizon customer data through LocationSmart's website via a demonstration page for prospective [LocationSmart] customers."⁶³ Though Verizon claims that the cybersecurity research only attempted location queries for individuals who had consented, it nonetheless suggested "that it was not aware of LocationSmart's use of Verizon customer location information for this purpose before the investigation and state[d] that it 'directed both LocationSmart and Zumigo to not use Verizon customer data in any demonstration site going forward.'"⁶⁴

16. On June 12, 2018, Verizon notified the two Aggregators that it intended to terminate their contracts under the LBS program as soon as possible.⁶⁵ However, it was not until November 30, 2018, that Verizon terminated all arrangements with Zumigo, and terminated all but four arrangements with LocationSmart (the four exceptions being arrangements with companies that provided location-based roadside assistance).⁶⁶ Per Verizon, during the more than five intervening months it had "(1) stopped authorizing any new uses of location information by the Aggregators or the sharing of such information with any new customers of the Aggregators, and (2) strengthened its transaction verification process to identify anomalies in consent requests that might be indicative of a problem (e.g., multiple location requests in a 24-hour period or an increase in location requests that are out of the ordinary)."⁶⁷

17. While Verizon was phasing out its relationships with the Aggregators, it started a "Direct Location Services" program as an alternative, under which Verizon itself would obtain consent from its customers to share their location information with particular LBS providers.⁶⁸ Verizon obtained affirmative consent by sending its customer a text message and only sharing location information with an LBS provider if the Verizon customer responded affirmatively to the text message request.⁶⁹

18. Eventually, Verizon completely exited the location-based services business. On April 5, 2019, Verizon announced it would terminate its in-house Direct Location Services program by the end of July 2019.⁷⁰ As far as its LBS Aggregator program, Verizon stopped providing LocationSmart and its four remaining LBS providers access to Verizon customer location information on March 30, 2019.⁷¹ In other words, Verizon did not finally terminate its location-based service program until March 30, 2019, or 324 days from when the *New York Times* first reported on the Securus location-finding service, as well as the abuse of that service by Hutcheson.

19. *Notice of Apparent Liability.* On February 28, 2020, the Commission issued the *Verizon NAL* proposing a \$48,318,750 fine against Verizon for its apparent willful and repeated violation of

⁶¹ See *NAL*, 35 FCC Rcd at 1710, para. 29 (citing LOI Response at 12, Response to Question 8).

⁶² *NAL*, 35 FCC Rcd at 1710, para. 30 (citing LOI Response at 12, Response to Question 8).

⁶³ *NAL*, 35 FCC Rcd at 1710, para. 31 (citing LOI Response at 13, Response to Question 10).

⁶⁴ *NAL*, 35 FCC Rcd at 1710, para. 31 (citing LOI Response at 13, Response to Question 10).

⁶⁵ *NAL*, 35 FCC Rcd at 1710, para. 32 (citing LOI Response at 9, Response to Question 6).

⁶⁶ See *NAL*, 35 FCC Rcd at 1710, para. 34 (citing Supplemental LOI Response at 2, Response to Question 1).

⁶⁷ *NAL*, 35 FCC Rcd at 1710, para. 32 (citing LOI Response at 10, Response to Question 6).

⁶⁸ See *NAL*, 35 FCC Rcd at 1710-11, para. 33 (citing LOI Response at 9, Response to Question 6; Supplemental LOI Response at 3, Response to Question 1).

⁶⁹ See *NAL*, 35 FCC Rcd at 1711, para. 33 (citing Supplemental LOI Response at 3, 9, Response to Questions 1, 4).

⁷⁰ See *NAL*, 35 FCC Rcd at 1711, para. 36 (citing Supplemental LOI Response at 5, Response to Question 1).

⁷¹ See *NAL*, 35 FCC Rcd at 1711, para. 35 (Supplemental LOI Response at 2, Response to Question 1).

section 222 of the Act and section 64.2010 of the Commission's CPNI Rules for failing to have reasonable protections in place to prevent unauthorized access to customer location information. In the *Verizon NAL*, the Commission also admonished Verizon for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it.

20. On May 7, 2020, Verizon filed a response to the *NAL*.⁷² Verizon makes a number of arguments as to why the *NAL* should be withdrawn and cancelled. Verizon argues that location information is not CPNI and thus is not subject to the Act and the Commission's CPNI Rules, and that even if it was, the Company did not have fair notice that it would be classified as CPNI.⁷³ Verizon also argues that it acted reasonably both pre- and post-publication of the *New York Times* article. The Company claims that the LBS program had reasonable protections in place before the *New York Times* article, and that the Company's response to the article, including its months-long continuation of the LBS program, was likewise reasonable.⁷⁴ Verizon argues that the forfeiture amount is arbitrary and capricious.⁷⁵ Finally, Verizon contends that the forfeiture amount is incorrect insofar as the *NAL* miscounts the number of LBS providers and the number of days in the forfeiture calculation.⁷⁶

III. DISCUSSION

21. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁷⁷ section 1.80 of the Commission's rules,⁷⁸ and the Commission's *Forfeiture Policy Statement*.⁷⁹ When we assess forfeitures, section 503(b)(2)(E) requires that the Commission take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁸⁰ We have fully considered Verizon's *NAL* Response, which includes a variety of legal and factual arguments. With one exception, we find none of Verizon's arguments persuasive. Upon review of Verizon's *NAL* Response and a further review of the evidence in the record, we will adjust the forfeiture calculation to account for updated evidence related to the non-participation of two entities in Verizon's LBS program that had been included in the original forfeiture calculation. We therefore reduce the \$48,318,750 forfeiture proposed in the *NAL* by \$1,417,500, and impose a penalty of \$46,901,250.

A. Location Information is CPNI

22. As the *NAL* explained in more detail, the customer location information disclosed in Verizon's LBS program is CPNI under the Act and our rules.⁸¹ Section 222 defines CPNI as "information that relates to the quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier,

⁷² *Verizon Communications*, Response to Notice of Apparent Liability for Forfeiture and Admonishment (filed May 7, 2020) (on file in EB-TCD-18-00027698) (*NAL* Response or Response).

⁷³ *NAL* Response at 5-6, 9-11, 32-39.

⁷⁴ *NAL* Response at 39-40, 44-54.

⁷⁵ *NAL* Response at 8-9, 56-59.

⁷⁶ *NAL* Response at 58, Exh. A (Supplemental Declaration of John A. Bruner, Aegis Mobile, LLC, para. 12 (May 6, 2020)), Exh D.

⁷⁷ 47 U.S.C. § 503(b).

⁷⁸ 47 CFR § 1.80.

⁷⁹ *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 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁸⁰ 47 U.S.C. § 503(b)(2)(E).

⁸¹ See *NAL*, 35 FCC Rcd at 1712-14, paras. 41-48.

and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”⁸² The customer location information used in Verizon’s LBS program falls squarely within this definition. Verizon’s arguments to the contrary⁸³ are largely reiterations of arguments the Commission considered and found unpersuasive in the *NAL*. Consistent with the analysis of location data found in the *NAL*, we remain persuaded that the location data at issue here constitute CPNI.

23. First, the customer location information at issue here relates to the location of a telecommunications service—i.e., Verizon’s commercial mobile service.⁸⁴ As fully explained in the *NAL*:

A wireless mobile device undergoes an authentication and attachment process to the carrier’s network, via the closest towers. After a mobile device is authenticated and logically attached to a wireless network, it may be (1) connected (sending/receiving data/voice) or (2) idle. In either state, the carrier must be aware of and use the device’s location in order for it to enable customers to send and receive calls. Verizon is therefore providing telecommunications service to these customers whenever it is enabling the customer’s device to send and receive calls—regardless of whether the device is actively in use for a call.⁸⁵

24. We conclude that the location information at issue here meets the first prong of the CPNI definition under either of two alternative interpretations. For one, we believe that the relevant statutory language is best read as referring to “information that relates to the . . . location, . . . of a telecommunications service”⁸⁶ That interpretation accords with the “rule of the last antecedent,” which suggests that the term “of use” in section 222(h)(1)(A) modifies only “amount,” as opposed to the preceding terms such as “location.”⁸⁷ Our interpretation also better squares with the broader operation of section 222. If the language “of use” modified every term in the preceding list, it would lead to apparently anomalous results. For instance, although the phrase “amount of use of a telecommunications service” plainly refers at least to the number and length of telephone calls, it is not clear what “technical configuration of use” would mean. And our interpretation squares more readily with section 222(d)(1), which preserves carriers’ ability to use CPNI to “initiate” service⁸⁸—an event that, aspects of which, ordinarily occur before the service is in “use.”

25. The location information at issue here readily fits within that interpretation of the first prong of the CPNI definition. Verizon’s customers can access the commercial mobile service to which they subscribe over a broad geographic area, and their location at a given point in time—and the fact of Verizon’s ability to use its network to determinate that location—is reasonably understood as associated with or a reference to the location of the Verizon telecommunications service.⁸⁹ Consequently, consistent

⁸² 47 U.S.C. § 222(h)(1)(A) (emphasis added).

⁸³ See *NAL* Response at 5-6, 9-11, 32-39.

⁸⁴ See 47 U.S.C. § 332(c)(1) (providing that “a person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter”), (d)(1) (defining “commercial mobile service”).

⁸⁵ See *NAL*, 35 FCC Rcd at 1712, para. 43.

⁸⁶ 47 U.S.C. § 222(h)(1)(A).

⁸⁷ See, e.g., *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (the rule of the last antecedent “provides that ‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows’”).

⁸⁸ 47 U.S.C. § 222(d)(1).

⁸⁹ See, e.g., *NAL*, 35 FCC Rcd at 1703, para. 11 (“Verizon provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on Verizon’s wireless network.”).

with our assessment in the *NAL*,⁹⁰ we find this to be information that “relates to” the location of Verizon’s telecommunications service within the meaning of the first prong of the CPNI definition.⁹¹

26. In the alternative, even if the term “of use” modified “location,” we still conclude the information at issue fits within the first prong of the definition of CPNI. Verizon does not dispute the *NAL*’s explanation that customers’ devices and Verizon’s network regularly exchange information as necessary for customers to send and receive calls.⁹² To the extent that Verizon contends that this does not represent use of the telecommunications service because it merely enables the provision of that service, Verizon does not demonstrate why that is a fair characterization or why it would represent a meaningful distinction in any case. Consistent with the reasoning of the *NAL*,⁹³ we believe that Verizon’s customers subscribe to its commercial mobile service to enable them to receive and transmit calls. When customers’ devices are exchanging communications with Verizon’s network, and thereby ensuring that they can receive incoming calls and place outgoing calls, we think that is a clear case of using the service to which they have subscribed, even outside the moments in time when they are engaged in calls.⁹⁴

27. Nor do Verizon’s arguments about the source and intended purpose of the location data at issue here persuade us to reach a contrary result. Verizon contends that the location data at issue here, while generated using “the same network functionality as the normal-course operational pinging that occurs between cell sites and customer devices to facilitate Verizon services,” nonetheless “occurred separately from that normal-course operation—and was done specifically for the purpose of facilitating the third-party location-based services.”⁹⁵ Thus, Verizon says, it obtained such location data with the intent of using it for purposes of its LBS initiative, rather than Verizon’s provision of commercial mobile service.⁹⁶ But nothing in the text of the first prong of the CPNI definition turns on the carriers’ stated intent in collecting it. So long as the information “relates to” one or more of the specified criteria, the other factors raised by Verizon do not matter. And as noted above, the information at issue here “relates to” the location of the telecommunications service (or to the location of use of that service), regardless of how Verizon obtained the information and how it planned to use the information.

28. We also are unpersuaded by Verizon’s arguments that the location information covered by the first prong of the definition of CPNI is limited to call location information for voice calls based on

⁹⁰ See, e.g., *NAL*, 35 FCC Rcd at 1712-14, paras. 43, 46.

⁹¹ See, e.g., *Collins Concise Dictionary*, Third Ed., at 1129 (HarperCollins Pub. 1995) (defining “relate” as, among other things, “establishing association (between two or more things) or (of something) to have relation or reference (to something else)”; *American Heritage Dictionary*, Third Ed., at 695 (Dell Pub. 1994) (defining “relate” as, among other things, “To bring into logical or natural association,” “To establish or demonstrate a connection between,” or “To have connection, relation, or reference”); *Merriam-Webster’s Collegiate Dictionary*, Tenth Ed., at 987 (Merriam-Webster Pub. 1994) (defining “relate” as, among other things, “to show or establish logical or causal connection between”); *The Oxford Paperback Dictionary & Thesaurus*, at 636 (Oxford Univ. Press 1997) (defining “relate” as, among other things, “connect in thought or meaning” or “have reference to”).

⁹² *NAL*, 35 FCC Rcd at 1712-13, para. 43.

⁹³ See, e.g., *NAL*, 35 FCC Rcd at 1712-14, paras. 43, 46.

⁹⁴ Definitions of “use” appear sufficiently broad to encompass our understanding of the term in this scenario. See, e.g., *Collins Concise Dictionary*, Third Ed., at 1483 (HarperCollins Pub. 1995) (defining “use,” among other things, to mean “to put into service or action; employ for a given purpose”); *American Heritage Dictionary*, Third Ed., at 884 (Dell Pub. 1994) (defining “use,” among other things, to mean “To put into service; employ” and “To avail oneself of; practice”); *Merriam-Webster’s Collegiate Dictionary*, Tenth Ed., at 1301 (Merriam-Webster Pub. 1994) (defining “use,” among other things, to mean “to put into action or service: avail oneself of”); *The Oxford Paperback Dictionary & Thesaurus*, at 853 (Oxford Univ. Press 1997) (defining “use,” among other things, to mean “cause to act or serve for purpose; bring into service” and “exploit for one’s own ends”).

⁹⁵ *NAL* Response at 34.

⁹⁶ *NAL* Response at 34-35.

what Verizon gleans from other language in section 222.⁹⁷ In addition to the *NAL*'s responses in this regard,⁹⁸ we conclude that the use of "location" in (h)(1)(A) as opposed to "call location information" in (d)(4) and (f)(1) must be given some significance.⁹⁹ All *location* information is protected as CPNI under (h)(1)(A). But carriers can disclose *call location* information for 911 purposes under (d)(4), which makes sense because 911 calls are *calls*. Nor would it have been irrational for Congress to expressly require opt-in consent for call location information in section 222(f)(1) if the definition of CPNI encompasses other forms of location information, as well. At the time the provision was enacted in 1999, Congress might reasonably have viewed call location information as obviously sufficiently sensitive to necessitate opt-in approval requirements while leaving it to the Commission's discretion whether to require opt-in approval for other location information, just as for other information falling within the definition of CPNI more generally. In addition, the Commission's references to "calls" in a prior order that was focused in significant part on data regarding customers' calls—and which did not purport to exhaustively address the application of section 222 to mobile wireless service—cannot reasonably be read as setting forth the outer bounds of the Commission's understanding of section 222.¹⁰⁰

29. *Second*, the location information at issue was obtained by Verizon solely by virtue of its customer-carrier relationship. The *NAL* explains this in more detail, but the crux of the matter is that:

Verizon provides wireless telephony services to the affected customers because they have chosen Verizon to be their provider of telecommunications service—in other words, they have a carrier-customer relationship. . . . Verizon's customers provided their wireless location data to Verizon because of their customer-carrier relationship with Verizon, . . .¹⁰¹

In sum, although Verizon might also provide non-common-carrier services to the same customer, the customer provided the relevant data "solely by virtue of the carrier-customer relationship."¹⁰²

30. The *NAL* did not specify with precision the standard for applying the second prong of the CPNI definition, and although we elaborate further on some of its contours here, we likewise need not resolve that question with specificity because we find that prong met here under a range of possible approaches. We begin by observing that the second prong of the CPNI definition is focused on a "relationship"—namely, the "carrier-customer relationship."¹⁰³ A relationship presumes associations involving at least two parties, and we conclude that it must be understood with that context in mind, rather than focused single-mindedly on one side of the relationship. Our accounting for the customer's viewpoint is also supported by the statutory text's focus on whether the information "is made available to the carrier by the customer"—rather than "obtained by the carrier"—"solely by virtue of the carrier-

⁹⁷ See, e.g., *NAL* Response at 5, 32-34.

⁹⁸ *NAL*, 35 FCC Rcd at 1714, para. 47.

⁹⁹ This interpretive approach is consistent with how the Commission has approached the interpretation of section 222 in other contexts in the past. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8084-85, para. 32 (1998) (distinguishing the interpretation of different language in section 222(a), (c)(1), and (d)(1), given that, "[u]nder well-established principles of statutory construction, 'where Congress has chosen different language in proximate subsections of the same statute,' we are 'obligated to give that choice effect'").

¹⁰⁰ See generally *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609 (2013) (*2013 CPNI Declaratory Ruling*).

¹⁰¹ *NAL*, 35 FCC Rcd at 1713, para. 44.

¹⁰² *NAL*, 35 FCC Rcd at 1714, para. 46.

¹⁰³ 47 U.S.C. § 222(h)(1)(A).

customer relationship.”¹⁰⁴ Thus, although Verizon suggests that its acquisition of the location information at issue here is in some sense distinct from, or does not depend exclusively on, the carrier-customer relationship,¹⁰⁵ we find that belied by the technical and marketplace realities here, as experienced by Verizon customers.

31. As the *NAL* explains, when a customer subscribes to Verizon’s commercial mobile service, Verizon “enables the connection of a customer’s device to its network for the purpose of sending and receiving calls, and the customer has no choice but to reveal that location to the carrier.”¹⁰⁶ Verizon does not dispute that the carrier-customer relationship fully enables Verizon to obtain the location data at issue here. Verizon contends that while it obtained location data for its LBS program using the same mechanism as it did to provide other services, its acquisition of location information nonetheless “occurred separately from that normal-course operation—and was done specifically for the purpose of facilitating the third-party location-based services.”¹⁰⁷ However, Verizon does not claim that a customer, having subscribed to its commercial mobile service, entered a separate agreement with Verizon for the provision of that location information—or that Verizon’s voice customers had any way to avoid providing that information if they wanted to subscribe to Verizon’s commercial mobile service. Under circumstances such as these, we conclude that the location information at issue from Verizon’s commercial mobile service customers was “made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”¹⁰⁸

32. Although we find that reasoning sufficient to resolve the application of the second prong of the CPNI definition, we independently conclude that the same decision is warranted even if we parse the matter more finely. For example, in its *NAL* Response, Verizon has argued that the location information at issue in this matter should not be considered CPNI because the “same equipment-to-device communication occurs for customers using data services . . . as it does for customers making phone calls” and that the “vast majority of traffic on Verizon’s network . . . is data traffic.”¹⁰⁹ But we are not persuaded that Verizon’s provision of multiple services to its telecommunications customers (including SMS text messaging and internet service) takes the resulting *relationship* outside the scope of the “carrier-customer” relationship for the specific purposes of the CPNI definition. Nothing dissuades us that the purchase of telecommunications service alone was sufficient to obligate Verizon’s customers to make their location information available to Verizon,¹¹⁰ and in evaluating the second prong of the CPNI

¹⁰⁴ 47 U.S.C. § 222(h)(1)(A). Insofar as Verizon disputes whether “the location information that Verizon obtains” is “obtained solely by virtue of Verizon’s provision of telecommunications service,” *see, e.g.*, *NAL* Response at 36, the focus on Verizon’s “telecommunications service” neither reflects the statutory text regarding prong two of the CPNI definition nor does it appropriately account for these concepts underlying the statutory focus on a customer-carrier “relationship.” To be sure, section 222(c)(1) is limited in scope to “a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service.” 47 U.S.C. § 222(c)(1). But in that provision, the required nexus is just that the carrier receive or obtain the CPNI “by virtue” (not “solely by virtue”) of its provision of a telecommunications service. In its *NAL* Response, Verizon disputes whether the location information at issue meets the statutory definition of CPNI in section 222(h)(1)(A), *see* *NAL* Response at 34-36, but does not contend that, if it does meet that definition, section 222(c)(1) nonetheless should not be interpreted to apply here.

¹⁰⁵ *See, e.g.*, *NAL* Response at 9, 34-36.

¹⁰⁶ *NAL*, 35 FCC Rcd at 1713, para. 45.

¹⁰⁷ *NAL* Response at 34.

¹⁰⁸ 47 U.S.C. § 222(h)(1)(A).

¹⁰⁹ *NAL* Response at 9.

¹¹⁰ Consequently, this is not a situation where we are relying on a theory that the carrier-customer relationship was merely one of a “confluence of multiple factors”—including relationships beyond the carrier-customer relationship itself—that collectively were required for Verizon to obtain the location information at issue here. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1739 (2019) (In contrast to the statute at issue there, Congress “could have added (continued....)

definition in the past, the Commission has noted that a carrier's "unique position with respect to its customers" when the carrier pre-configures a mobile device to collect information can satisfy "the 'carrier-customer relationship' element of the definition of CPNI."¹¹¹ Verizon points out¹¹² that section 153(51) of the Act provides that "[a] telecommunications carrier shall be treated as a common carrier under [the Act] only to the extent that it is engaged in providing telecommunications services."¹¹³ But we are far from that scenario here, given the many necessary links to Verizon's telecommunications services for the CPNI definition to apply.¹¹⁴ For one, the protections of section 222(c) only apply with respect to "information that relates to" certain characteristics of "a telecommunications service subscribed to by any customer of" Verizon.¹¹⁵ And the information must have been provided by consumers in a manner that reflects the statutorily required nexus to Verizon's telecommunications service.¹¹⁶ Our interpretation and application of section 222 thus accords with the text of both section 222 and section 153 of the Act, even if it does not reflect the policy that Verizon would prefer.

33. Finally, we reject Verizon's argument that because it also gathered location information from consumers who only subscribed to information services (e.g., tablets) and did not partake of telecommunications services, *none* of the location information has been gathered solely by virtue of the customer-carrier relationship.¹¹⁷ Against the backdrop of the analysis above, that only bears on the status of the information from those specific, non-voice, customers. The *NAL*'s proposed forfeitures turn not on specific effects on specific customers individually but on Verizon's corporate practices as a whole with respect to the entities that received LBS data.¹¹⁸ Verizon does not contend that the LBS data that it provided, directly or indirectly, to any of the entities associated with the proposed forfeitures in the *NAL* was limited exclusively to data from non-voice customers. Thus, the Verizon practices that formed the basis of the proposed forfeitures in the *NAL* included information from voice customers, which falls within the definition of CPNI for the reasons explained above.

34. The Commission therefore affirms its finding from the *NAL* that the location information at issue in the LBS program is CPNI.

'solely' to indicate that actions taken 'because of ' the confluence of multiple factors do not violate the law.');

cf. *id.* (observing that "[o]ften, events have multiple but-for causes"). By contrast, information that carriers obtain independently from public records, for example, would not be information that the customer provided to the carrier solely by virtue of the carrier-customer relationship.

¹¹¹ 2013 CPNI Declaratory Ruling, 28 FCC Rcd at 9616, para 23.

¹¹² See NAL Response at 36 n.28.

¹¹³ 47 U.S.C. § 153(51).

¹¹⁴ For similar reasons, we reject the suggestion that our approach regulates Verizon under section 222 based on the mere fact that it has the status of a telecommunications carrier, rather than being linked to its specific offering of telecommunications services. See NAL Response at 32-36.

¹¹⁵ 47 U.S.C. § 222(h)(1)(A).

¹¹⁶ 47 U.S.C. § 222(h)(1)(A).

¹¹⁷ See NAL Response at 35-36.

¹¹⁸ In particular, the *NAL* did not propose forfeitures based on unauthorized disclosure of CPNI associated with particular customers—it proposed forfeitures based on allegations that Verizon failed to take reasonable steps to protect its customers' location information, with forfeitures proposed not on a per-customer basis but on the basis of the days in which Verizon allegedly did not have a reasonable policy in place for particular entities that received LBS data. See, e.g., *NAL*, 35 FCC Rcd at 1726-27, para. 87. And while *FTC v. AT&T Mobility LLC*, 883 F.3d 848 (9th Cir. 2018) (en banc), concluded that the common-carrier limitation on the FTC's authority is activities-based, rather than status-based, it also recognized that "there may be some overlap between the agencies' jurisdiction when the FCC's regulations of common carriers affect the non-common-carrier activities of those entities," observing that "[i]n the administrative context, two cops on the beat is nothing unusual." *Id.* at 862. Thus, our interpretation of section 222 is not at odds with the court's decision in *FTC v. AT&T Mobility*.

B. Verizon Had Fair Notice That its LBS Practices Were Subject to Enforcement Under the Communications Act

35. We reject Verizon's claim that it lacked fair notice that its practices involving customer location information were subject to the Communications Act and potential penalties thereunder.¹¹⁹ The language of section 222 makes clear that customer location information is CPNI; Verizon's practices involving CPNI, including customer location information, unquestionably are regulated under the Act and the Commission's CPNI Rules; and Verizon's failure to comply with the requirements of the Act and our rules, including the "reasonable measures" mandate of section 64.2010, foreseeably makes the Company liable for a forfeiture penalty under section 503 of the Act.

36. Verizon argues that if the Commission wishes to classify location information as CPNI, "it must do so on a prospective basis through a rulemaking or declaratory ruling."¹²⁰ But the Commission is not limited to these options. When, as in this case, a carrier's conduct falls within an area subject to regulation by the Commission, it is well established that enforcement action is also a proper vehicle to adjudicate the specific bounds of what is lawful and what is not, subject to principles of fair notice.¹²¹

37. Contrary to Verizon's assertion, the Commission is not "impos[ing] retroactive liability on a carrier that did not have adequate notice"¹²² As the D.C. Circuit has explained, "[t]he fair notice doctrine, which is couched in terms of due process, provides redress only if an agency's interpretation is 'so far from a reasonable person's understanding of the regulations that they could not have fairly informed the regulated party of the agency's perspective.'"¹²³ And, in general, fair notice principles require that a regulated party be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.¹²⁴

38. Here, the Commission previously explained in the *2013 Declaratory Ruling* that it would not "set out a comprehensive list of data elements that pertain to a telecommunications service and satisfy the definition of CPNI and those data elements that do not."¹²⁵ Thus, Verizon cannot reasonably have assumed that the fact a given scenario had not been expressly addressed by Commission rules and precedent meant it fell outside the scope of CPNI and the associated protections of section 222 and the

¹¹⁹ See NAL Response at 38-39.

¹²⁰ NAL Response at 38. As discussed more fully in this section, contrary to Verizon's argument, Verizon could have reasonably ascertained that the location information at issue here would be found to meet the definition of CPNI and Verizon would be subject to forfeiture penalties for failing to protect that customer location information as required under section 222 and the CPNI Rules.

¹²¹ See, e.g., *City of Arlington, Texas v. FCC*, 569 U.S. 290, 307 (2013) (affirmatively stating that "Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication"); *Neustar, Inc. v. FCC*, 857 F.3d 886, 894 (D.C. Cir. 2017); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that "the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application") (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (stating that "the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency").

¹²² NAL Response at 38.

¹²³ *Mississippi Comm'n on Envtl. Quality v. EPA*, 790 F.3d 138, 186 (D.C. Cir. 2015) (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998)); see also *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988) ("statutes cannot, in reason, define proscribed behavior exhaustively or with consummate precision").

¹²⁴ *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) ("In assessing forfeitures against regulated entities, the Commission is required to provide adequate notice of the substance of the rule. . . . The court must consider whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.") (internal quotations and citations omitted).

¹²⁵ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

Commission's implementing rules. To the contrary, the Commission has stated that "implicit in section 222 is a rebuttable presumption that information that fits the definition of CPNI contained in section 222(h)(1) is in fact CPNI."¹²⁶ Moreover, even while declining to comprehensively identify CPNI, including in the case of location information, the Commission emphasized that "location information in particular can be very sensitive customer information."¹²⁷ In addition, notwithstanding the fair notice claims it makes now, Verizon asserted to the Commission that it treated customer location information in an essentially equivalent manner to CPNI.¹²⁸

39. Further, our conclusion that the location data at issue here fall within the definition of CPNI flows from the text of section 222 is consistent with the Commission's approach to interpreting that provision as laid out in prior precedent. As noted, CPNI is defined by statute, in relevant part, to include "information that relates to . . . the location . . . of a telecommunications service."¹²⁹ That definition further directs us to evaluate whether the relevant information "is made available to the carrier by the customer solely by virtue of the carrier-customer relationship."¹³⁰ Our interpretation of those provisions above relies on the statutory text, interpreted consistent with ordinary tools of statutory interpretation, and is consistent with prior Commission precedent.

40. Finally, Verizon had fair notice of its obligations with respect to CPNI under section 64.2010 of the Commission's rules. In pertinent part, that rule provides that "[t]elecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."¹³¹ Beyond "requir[ing] carriers to implement the specific minimum requirements set forth in the Commission's rules," to comply with section 64.2010, the Commission "further expect[s] carriers to take additional steps to protect the privacy of CPNI to the extent such additional measures are feasible for a particular carrier."¹³² The Commission granted carriers flexibility to incorporate the specific measures and practices that are consistent with their otherwise-existing "technological choices."¹³³ In the *2007 CPNI Order*, the Commission also explained, for example, that "a carrier that practices willful blindness" regarding unauthorized disclosure of CPNI likely "would not be able to demonstrate that it has taken sufficient measures" to discover and protect against such conduct.¹³⁴ And in the same order, the

¹²⁶ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14495-96, para. 167 (1999). Although the Commission was responding, in part, to a request for clarification from MCI regarding "laundering" of CPNI by virtue of transfers to affiliated or unaffiliated entities, it was not limited just to that scenario alone. See, e.g., *id.* at 14495, para. 166 (describing the MCI request for clarification being addressed as, among other things, "seek[ing] clarification that there is a rebuttable presumption that customer-specific information in a carrier's files was received on a confidential basis or through a service relationship governed by section 222").

¹²⁷ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹²⁸ See NAL Response at 40. Verizon concedes that "...even if the information used in Verizon's aggregator program were CPNI or even 'call location information,' Verizon would have satisfied either of Section 222's consent requirements because Verizon required affirmative, opt-in customer consent — the highest level of consent that Section 222 contemplates — before third parties were permitted to access customer location information." *Id.*

¹²⁹ 47 U.S.C. § 222(h)(1)(A); see also, e.g., *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9616, para. 22 n.48 (citing section 222(h)(1)(A) as "defining CPNI to include 'information that relates to the . . . location . . . of a telecommunications service subscribed to by any customer of a telecommunications carrier'").

¹³⁰ 47 U.S.C. § 222(h)(1)(A).

¹³¹ 47 CFR § 64.2010(a).

¹³² *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64.

¹³³ *Id.* at 6959-60, para. 65; see also, e.g., *id.* at 6945-46, para. 34 ("we permit carriers to weigh the benefits and burdens of particular methods of possibly detecting pretexting," which "will allow carriers to improve the security of CPNI in the most efficient manner").

¹³⁴ *Id.* at 6946, para. 35.

Commission likewise identified the limitations of relying on “contractual safeguards” to address risks once CPNI has been disclosed outside the covered carrier.¹³⁵ Ultimately, while providing guidance regarding compliance with section 64.2010, the Commission also recognized that it was necessary to guard against providing bad actors “a ‘roadmap’ of how to obtain CPNI without authorization.”¹³⁶ This provides sufficient direction for Verizon to understand its obligations under the rule as relevant here.

41. Thus, Verizon could reasonably have ascertained that (1) any enumeration of CPNI data elements set out by the agency was not exhaustive; (2) the customer location information at issue would be found to meet the definition of CPNI; and (3) Verizon would be subject to forfeiture penalties for failing to protect that customer location information as required under section 222 and the Commission’s rules.¹³⁷

C. Verizon Failed to Take Reasonable Steps to Protect CPNI

42. Verizon violated section 222 of the Act and section 64.2010 of our rules by failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information.¹³⁸ While our rules recognize that companies cannot prevent all data breaches, the rules require carriers to take reasonable steps to safeguard their customers’ CPNI and discover attempts to gain access to their customers’ CPNI. Further, as noted below, where an unauthorized disclosure has occurred—as here—the burden of production shifts to the carrier to offer evidence that it did have reasonable measures in place. Once the carrier offers some evidence of those safeguards, the rebuttable presumption falls away, and the Commission bears the burden of persuasion and must find by a preponderance of the evidence that the carrier’s safeguards were unreasonable in order to find a violation of 47 CFR § 64.2010(a). Verizon contends that the Securus disclosures to Hutcheson did not constitute legal violations of section 222, disputes the timing and scope of those disclosures, and contends that finding a violation of section 222 and the Commission’s rules otherwise is unjustified with regard to those disclosures.¹³⁹ Verizon then claims that it acted reasonably to protect its customers’ location information both before and after the Securus disclosure came to light.¹⁴⁰ Verizon also argues that the Commission improperly shifted the burden of proving that such protections were reasonable to Verizon.¹⁴¹ We find Verizon’s arguments unpersuasive.

1. Verizon’s Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222

43. As an initial matter, we conclude that it was not just disclosures to Hutcheson that were unauthorized. Rather, Securus’s entire location-finding service¹⁴² (as detailed in paragraphs 13-14, above) was predicated on unauthorized disclosures.¹⁴³ Consistent with Verizon’s own description of

¹³⁵ *Id.* at 6952-53, para. 49.

¹³⁶ *Id.* at 6959-60, para. 65.

¹³⁷ Accordingly, we reject Verizon’s argument that “[n]o carrier ‘acting in good faith’ could have identified ‘with ‘ascertainable certainty’” the NAL’s expansive view of CPNI.” NAL Response at 38.

¹³⁸ 47 CFR § 64.2010(a); *see also* 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64 (“We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.”).

¹³⁹ *See* NAL Response at 19-22, 28-30.

¹⁴⁰ *See* NAL Response at 39-40, 44-56.

¹⁴¹ *See* NAL Response at 40-44.

¹⁴² *See* NAL, 35 FCC Rcd at 1708-09, paras. 25-26 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

¹⁴³ Verizon states that “the NAL does not claim that Verizon disclosed information to Hutcheson—it claims that Securus did.” NAL Response at 28. But it was Verizon CPNI that was disclosed, and as the NAL explained, (continued....)

events, the program was outside the scope of not only its approved use case, but also beyond any agreement with either Aggregator (and thus had not been reviewed by Verizon).¹⁴⁴ Verizon conceded that it was unable to distinguish location requests unrelated to the authorized use case (which involved an inmate collect-calling service) and that the practice did not trigger any review by Aegis.¹⁴⁵ And, to be clear, none of the records submitted in connection with the location-finding service evinced a consumer's actual opt-in consent. Therefore, every time Securus submitted a request for location information under the guise of its approved use case (a use case that required consumer consent) and Verizon provided the requested location information, a separate, unauthorized disclosure occurred.

44. Verizon attempts to avoid this conclusion by: (1) concentrating only on the disclosures made to Hutcheson, not on the overall Securus location-finding program;¹⁴⁶ and (2) trying to use section 222(c)(1)'s exception for disclosures that are required by law to shield itself.¹⁴⁷ This misses the larger point. Whether or not there was a legitimate law enforcement request for the information is irrelevant if Verizon did not satisfy its own obligations under section 222. Verizon provided the location information to Securus under Securus's false pretenses, and Verizon only did so because it took Securus at its word that Securus had obtained opt-in consumer consent.¹⁴⁸ This means that Verizon did not review any law enforcement requests and likewise did not provide the information pursuant to a law enforcement request because Verizon did not know there *were* any law enforcement requests in the first place – legitimate or otherwise.¹⁴⁹ Separately and independently, there is no indication that the law enforcement requests were properly reviewed by Securus, as evidenced by the ready success of Hutcheson's thinly veiled ruse.¹⁵⁰

"Verizon is not absolved from liability simply because it was not directly responsible for operating the programs under which unauthorized disclosures occurred." *NAL*, 35 FCC Rcd at 1715, para. 52.

¹⁴⁴ See LOI Response at 11-12, Response to Question 8; *NAL*, 35 FCC Rcd at 1709, para. 27; *see also, e.g.*, *NAL* Response at 19-21.

¹⁴⁵ See *NAL*, 35 FCC Rcd at 1709-10, 1715, paras. 27-29, 51.

¹⁴⁶ See *NAL* Response at 19-22 (raising arguments based on the number of identified disclosures to Hutcheson and the time periods at issue in those identified disclosures); *id.* at 48 (disputing "that the fact that Securus was able to share with Hutcheson the information for a small number of Verizon customers without authorization is evidence that Verizon's program safeguards were inadequate").

¹⁴⁷ See *NAL* Response at 20 n.17 (relying on 47 U.S.C. § 222(c)(1), which allows disclosure of CPNI "as required by law").

¹⁴⁸ As the *NAL* explained, "[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers' CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law." *NAL*, 35 FCC Rcd at 1716, para. 54 n.145. Although the *NAL* noted that "Verizon does not appear to argue that situation is present here," *id.*, the totality of the record persuades us that this is, in fact, the import of the facts and Verizon's arguments here.

¹⁴⁹ See LOI Response at 11-12, Response to Question 8; *NAL*, 35 FCC Rcd at 1709, para. 27; *NAL* Response at 19-21. *See also* *NAL*, 35 FCC Rcd at 1708-09, paras. 25-26 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, Riverfront Times (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>). It is not reasonable to interpret Verizon as having been relying on a third party to disclose information as required by law where Verizon neither knew nor approved of the third party doing so.

¹⁵⁰ See Hutcheson Sentencing Memo at 3-4 (explaining that after uploading documents that were blatantly not legal authorizations, location information was immediately transmitted with no intervening time for any documents to be reviewed for validity); *NAL*, 35 FCC Rcd at 1709, para. 26 (describing Hutcheson's uploading of documents that were blatantly not legal authorizations in order to obtain location information). As the *NAL* explained, "Verizon does not deny the existence of the Securus location-finding service nor the abuse of that system by Hutcheson." *NAL*, 35 FCC Rcd at 1709, para. 27. Verizon likewise does not dispute here that Hutcheson was, as a general matter, able to access location data by providing documents that were blatantly not legal authorizations as described (continued....)

Thus, the disclosures made to Hutcheson were doubly unauthorized under section 222(c)(1). First, Securus used the façade of their approved use case to hide the true purpose and destination of the request, resulting in Verizon’s unauthorized disclosure of location information to Securus. Second, Hutcheson likewise submitted blatantly fake requests to Securus under the guise of law enforcement, resulting in Securus’s unauthorized disclosure of location information to Hutcheson.¹⁵¹ Despite Verizon’s arguments, the Company is clearly not “required by law” to disclose location information based on any and every pretense or unsupported request. Therefore, consistent with the *NAL*, we find that the Securus disclosures, including those made to Hutcheson, were unauthorized.

45. We thus conclude that Verizon was appropriately admonished in relation to such disclosures.¹⁵² In objecting to the admonishment, Verizon criticizes the approach of finding a violation of section 222 when there is an unauthorized disclosure of CPNI as inconsistent with the limits of carriers’ practical ability to prevent all unauthorized disclosures,¹⁵³ and as “contrary to the current CPNI rules, which enshrine a reasonableness approach to CPNI issues.”¹⁵⁴ But Verizon fails to grapple with the text of the restriction on unauthorized use or disclosure in section 222(c)(1) of the Act and section 64.2007(b) of the Commission’s rules.¹⁵⁵ Rather than incorporating some kind of *de minimis* exception or reasonableness standard, section 222(c)(1)’s statutory restriction on use and disclosure is unequivocal, as likewise reflected in section 64.2007(b) of the Commission’s rules.¹⁵⁶ Against that backdrop, we also are not persuaded that the admonishment causes unfair surprise to Verizon, even assuming *arguendo* that such a standard applied to an admonishment here.

2. Verizon’s Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures

46. The Commission affirms the *NAL* and finds that Verizon failed to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information. As fully laid out in the *NAL*, the record not only shows that Verizon did not have reasonable protections in place prior to 2018 *New York Times* article detailing the Securus/Hutcheson breaches,¹⁵⁷ but also that Verizon failed to promptly address its demonstrably inadequate CPNI safeguards after Securus/Hutcheson disclosure.¹⁵⁸

in the *NAL* and confirmed in the Hutcheson Sentencing Memo. It at most asserts that there conceivably might have been legal authorizations associated with the specifically-identified Verizon customers, *see* *NAL* Response at 20 n.17, but does provide any reason to believe that Securus (let alone Verizon) could have or would have made that assessment before providing the location data.

¹⁵¹ *See* Hutcheson Sentencing Memo at 3-4 (Hutcheson “uploaded legally defective search warrants that either did not authorize the acquisition of location data, were unsigned, or had no connection to the targeted phone user” and in “most of these instances . . . even notarized his own signature.”); *see also* *NAL*, 35 FCC Rcd at 1709, para. 26.

¹⁵² Among other things, Verizon argues that it would not have satisfied the willfulness requirement that is a prerequisite for a forfeiture under section 503(b) of the Act. *See* *NAL* Response at 28-29. Given that we do not impose a forfeiture for that conduct here, we need not address Verizon’s arguments in that regard.

¹⁵³ *See* *NAL* Response at 29.

¹⁵⁴ *NAL* Response at 29-30 (citing 47 CFR § 64.2010(a)).

¹⁵⁵ 47 U.S.C. § 222(c)(1); 47 CFR § 64.2007(b).

¹⁵⁶ We note that Verizon does not contend that it literally would not have been possible to avoid the disclosures, so our interpretation does not demand the impossible of Verizon or any other carrier.

¹⁵⁷ *See* *NAL*, 35 FCC Rcd at 1717-21, paras. 58-73. Verizon disputes the relevance of the reasonableness of Verizon’s procedures prior to the Securus and Hutcheson breaches, *see* *NAL* Response at 45 n.37, but Verizon neglects the fact that its post-breach procedures largely consist of those very same procedures, with only limited changes of potential relevance here.

¹⁵⁸ *See* *NAL*, 35 FCC Rcd at 1721-24, paras. 74-82.

47. Verizon attempts to excuse its unreasonable practices by cataloging the steps it did take before and after the *New York Times* article. Verizon argues that, prior to the Securus disclosure, its efforts conformed to the CTIA Guidelines for ensuring customer consent to the use of location data.¹⁵⁹ Specifically, Verizon states that its safeguards included: “vetting and conducting ongoing monitoring of third-party program participants; limiting the sharing of information to certain, preapproved use cases; imposing information security requirements and adherence to industry best practices; reviewing notice and consent language; requiring production of consent records on a daily basis; and retaining Aegis to review those consent records, analyze program data to find any potential issues, and otherwise monitor the program.”¹⁶⁰

48. The safeguards that Verizon had in place before the Securus disclosure were not reasonable. The CTIA guidelines focus on best practices for notice and consent by location-based service providers—but they do not include best practices recommendations for carriers that sell access to their customers’ location information to location-based service providers.¹⁶¹ For example, they do not offer guidance to carriers on how to assure that location-based service providers comply with a contractual obligation to access location information only after furnishing proper notice and receiving customer consent (which was at issue here). Further, to enforce the safeguards Verizon did use, the Company’s efforts “apparently mainly consisted of analysis of unverified vendor-created consent records,”¹⁶² and we agree with the *NAL* regarding those efforts’ shortcomings.¹⁶³ Although Verizon criticizes aspects of the analysis in the *NAL* and states that it also “used methods for discovering and addressing falsified transaction and consent records in connection with the location aggregator program that were *not* reliant only on the accuracy of what third parties submitted,”¹⁶⁴ we nonetheless conclude that the resulting measures employed were not reasonable. Critically, as explained in the *NAL*:

The unauthorized service did not collect consents from Verizon’s customers—just the opposite. When working as intended, Securus’s unauthorized program collected electronic copies of legal process asserting a right to obtain location information *without the knowledge or consent of the Verizon customer*. A system allegedly designed to monitor customer consents but that is incapable of detecting its opposite is not a “reasonable measure” to detect unauthorized uses of or access to CPNI.¹⁶⁵

Whatever risks Verizon’s measures might have guarded against in other respects,¹⁶⁶ we conclude that measures with such a significant loophole are unreasonable under section 64.2010(a).

49. Given our finding of significant shortcomings in the measures Verizon employed, we reject Verizon’s other criticisms of the analysis in the *NAL*. For one, Verizon seeks to characterize the

¹⁵⁹ See *NAL* Response at 54. To the extent that Verizon seeks to defend its actions by claiming that it attempted to ensure consumers provided opt-in consent, see *NAL* Response at 39-40, that aspiration is meaningful here only insofar as Verizon employed reasonable procedures to carry that out. Consistent with the *NAL*, and for the reasons explained below, we conclude that it did not.

¹⁶⁰ *NAL* Response at 46. The *NAL* also explained that the fact that Verizon provided access to “coarse” location data does not render its procedures reasonable. *NAL*, 35 FCC Rcd at 1720-21, para. 71. We agree with that assessment, which Verizon does not appear to dispute here.

¹⁶¹ See CTIA, Best Practices and Guidelines for Location Based Services, <https://www.ctia.org/the-wireless-industry/industry-commitments/best-practices-and-guidelines-for-location-based-services>.

¹⁶² See *NAL*, 35 FCC Rcd at 1721, para.72.

¹⁶³ *NAL*, 35 FCC Rcd at 1718-20, paras. 64-67.

¹⁶⁴ *NAL* Response at 47.

¹⁶⁵ *NAL*, 35 FCC Rcd at 1720, para. 70.

¹⁶⁶ See *NAL* Response at 48 (observing that “the *NAL* also expressly acknowledges instances in which Verizon’s program safeguards identified and addressed other potential issues.”).

Securus and Hutcheson breaches as outliers,¹⁶⁷ contending “[t]he fact that Verizon’s safeguards evidently prevented any unauthorized access by any other program participant or any impact on any other customer demonstrates that those safeguards were both reasonable and effective.”¹⁶⁸ Verizon also criticizes the Commission’s consideration of an internal Verizon analysis of its safeguards in the *NAL*,¹⁶⁹ characterizing that internal analysis as having identified a merely theoretical risk “that program participants . . . could have submitted falsified location requests or consent records” while seeking to rely on the report’s assertion that “[i]t is unlikely any current program companies are performing fraudulent activities to obtain [Verizon] subscriber information without their consent due to the program management processes and oversight that is in place today.”¹⁷⁰ Notably, however, Verizon’s measures were not what identified the unauthorized disclosures in the case of Securus and Hutcheson. Thus, in the face of what we see as the failing in a fundamental aspect of Verizon’s safeguards, we reject the theory that the reasonableness of those measures can be inferred from the fact that even more unauthorized disclosures have not been publicly identified.

50. Verizon also contends that the *NAL* misinterpreted information about what were merely preliminary results of the Aegis record reconciliation program, and that this misinterpretation led the Commission to question what those results signified for the effectiveness of Verizon’s measures.¹⁷¹ But the *NAL* made clear that it understood the relevant results flowed just from Aegis’ “initial attempts to match the consent and access records,” and recognized that, as an effort “to track down how well the Location Aggregators were fulfilling their record-keeping obligations,” it provided reason for concern.¹⁷² Verizon’s contention that Aegis ultimately could, with enough time and additional investigation, identify supporting consent records where it looked for them,¹⁷³ does not undermine the questions about the reliability of the LBS providers in following the contractual requirement—or of the strength of those contractual requirements—for ensuring that prior customer notice and consent was provided and obtained.¹⁷⁴ While Verizon’s explanation makes the case that its measures did provide some protection as to some potential risks, viewed in its totality we nonetheless find Verizon’s measures unreasonable for the reasons described here.

51. And to the extent that Verizon raises broader objections to the process for developing the record, particularly before the issuance of the *NAL*, those claims do not alter our analysis either.¹⁷⁵ Verizon had ample opportunity to present evidence and arguments in response to the *NAL*, and our conclusions here are based on what we know about the measures Verizon employed—not based on questions or uncertainty about how those safeguards operated.

52. Likewise, Verizon’s safeguards after the Securus disclosure were also unreasonable. Verizon should have been keenly aware of the inadequacy of its safeguards after the May 2018 *New York Times* article. Nonetheless, Verizon did not and cannot demonstrate that its safeguards were made reasonable in the months that followed the 2018 *New York Times* article. In fact, rather than promptly

¹⁶⁷ See *NAL* Response at 48-50.

¹⁶⁸ *NAL* Response at 50.

¹⁶⁹ See *NAL* Response at 46-47.

¹⁷⁰ *NAL* Response at 47.

¹⁷¹ See *NAL* Response at 48 n.39.

¹⁷² *NAL*, 35 FCC Rcd at 1719-20, para. 68.

¹⁷³ See *NAL* Response at 15-16. In a small number of cases, Aegis relied on sampling rather than comprehensively looking for supporting consent records. See *NAL* Response at 16.

¹⁷⁴ See, e.g., *NAL*, 35 FCC Rcd at 1719-20, para. 68 (noting that there could be significant variation in the initial results among different LBS providers and that Verizon itself looked to the results of Aegis’ initial attempts to verify consent to identify whether there was cause for concern).

¹⁷⁵ See *NAL* Response at 26, 48 n.39.

implementing reasonable safeguards, Verizon continued to sell access to its customers' location information under (for all intents and purposes) the *same system* that was exploited by Securus and Hutcheson.¹⁷⁶

53. We reject Verizon's attempt to dispute that the reports of the Securus and Hutcheson breaches should have made Verizon aware of the need for greater safeguards beyond cutting off Securus.¹⁷⁷ In particular, Verizon cites its theory that the location information is not CPNI and its view that the Securus/Hutcheson disclosures was a limited, outlier situation that did not raise broader questions about the efficacy of its safeguards.¹⁷⁸ As explained above, however, the location information is, in fact, CPNI.¹⁷⁹ And as explained earlier in this section, the Securus and Hutcheson breaches revealed fundamental shortcomings in Verizon's safeguards, rather than only demonstrating the sort of narrow, limited problems that Verizon claims. We therefore conclude that Verizon should have known of the inadequacies in its safeguards and the need for significant changes after the May 2018 *New York Times* article. Indeed, notwithstanding its arguments here, Verizon itself did, in fact, recognize the need to take steps in the wake of that article, ultimately including ending its location-based services initiative.¹⁸⁰

54. Although Verizon explored implementing an enhanced direct notice and consent mechanism, this approach did not extend beyond the exploratory stage.¹⁸¹ Likewise, Verizon touts the fact that after the May 2018 *New York Times* article "Verizon actually did decide within 30 days to terminate the program entirely," although it took a longer period of time to effectuate that decision.¹⁸² But the mere fact that Verizon was working on possible alternative processes or had not-yet-implemented plans to end its location aggregator initiative is not sufficient to satisfy its obligation to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."¹⁸³ Until the new measures actually are in place, or the initiative actually terminated, they cannot enable a carrier to "discover and protect against" the harms that are the target of that rule—and thus, they cannot be relied upon to satisfy that rule. Nor does the time and effort involved in Verizon's work on the exploratory processes or on terminating the location aggregator initiative render the procedures that remained in place in the meantime "reasonable" under that rule, given their glaring weaknesses.

55. We also are unpersuaded that the steps Verizon did take were reasonable. Verizon cut off 3CI and Securus and declined to allow access to location information for additional LBS providers and use cases,¹⁸⁴ but those actions did not improve the safeguards for consumers whose location information could be disclosed under the location data sharing arrangements that remained in place. Verizon also

¹⁷⁶ See *NAL*, 35 FCC Rcd at 1721, para.74.

¹⁷⁷ See *NAL* Response at 50-52.

¹⁷⁸ See *NAL* Response at 50-52.

¹⁷⁹ See *supra* section III.A.

¹⁸⁰ See *NAL* Response at 21-25.

¹⁸¹ See *NAL* Response at 53.

¹⁸² *NAL* Response at 51. Verizon argues that "the Commission never before set out specific requirements that a carrier must take in response to a third party's unauthorized access to location data, much less announced a hard-and-fast 30-day deadline by which any specific action must be taken." *Id.* at 8. The 30-day period cited in *NAL* was not a deadline but a grace period during which the Commission used its discretion and did not assess a fine. However, Verizon's existing data security practices were unreasonable both before and after the May 2018 article—the article merely exposed those unreasonable practices. As such, the Commission could have assessed a fine *for every single day* such unreasonable practices were in place (both before and after the Securus/Hutcheson disclosures)—the 30 days provided Verizon with a grace period to either end the program or reform its practices.

¹⁸³ 47 CFR § 64.2010(a).

¹⁸⁴ See, e.g., *NAL* Response at 21, 24, 51.

contends that it had Aegis review the vetting procedures and data analytics used.¹⁸⁵ But the only changes Verizon claims actually were implemented were having Aegis “strengthen the transaction verification process to identify any anomalies in the data relating to consent requests that could indicate a potential issue, such as multiple location requests within a 24-hour period or an increase in location requests that were out of the ordinary for a particular LBS provider.”¹⁸⁶ But nothing Verizon has said, nor anything in the record, gives the Commission any reason to believe that those particular measures were likely to have identified the problem that enabled the Securus and Hutcheson breaches in the first place. In particular, Verizon identified reasons why Aegis’ regular auditing did not identify the Securus and Hutcheson breaches,¹⁸⁷ and we are not persuaded that the newly implemented measures would have remedied those shortcomings. Further, Verizon does not identify the timing of when those measures were implemented, and while other steps were considered the record does not reveal whether or when they ultimately were implemented at all. Thus after considering all of the data security measures that Verizon implemented in response to the Securus disclosure¹⁸⁸ we conclude that these measures were inadequate.

56. Verizon further argues that the Commission fails to appropriately account for the fact that many location-based services are “beneficial services that Verizon’s customers affirmatively wanted.”¹⁸⁹ We disagree. The issue here is not whether there are any beneficial services offered by LBS providers, but whether Verizon reasonably protected its customers’ location information. In any event, because of the sensitive personal information involved, the benefits of LBS must be weighed against the risks; here, the risks were grave, particularly because Verizon did not have a reliable way of confirming customer consent. The Commission considered Verizon’s arguments, but finds they are outweighed by these risks.

57. The *NAL* listed numerous steps that could have been taken to squarely address the proven vulnerability, up to and including deploying enhanced measures to verify consumer consent (even directly verifying consumer consent) and shutting down the LBS program.¹⁹⁰ Rather than taking definitive steps to remedy the obvious LBS program issues, Verizon instead took piecemeal steps. Moreover, the steps Verizon took did not rectify the systemic vulnerabilities at the heart of its LBS program—including relying on third parties to obtain customer consent for the disclosure of location information and failing to verify the validity of that consent.

58. Verizon’s attempts to characterize the Commission as relying on an extreme strict liability-type approach fall short, as well.¹⁹¹ We agree with Verizon that section 64.2010 of the Commission’s rules requires only reasonable measures—not perfect ones—but that is not enough to help Verizon here.¹⁹² Contrary to Verizon’s suggestion, this is not a situation where the Commission is relying on 20/20 hindsight after a breach to find a violation of section 64.2010(a) of the rules based on any shortcoming in a carrier’s measures, no matter how small, that results in a strict liability approach that is

¹⁸⁵ See *NAL* Response at 52-53; *NAL* Response, Exh. A, Brunner Supplemental Decl. at para. 11.

¹⁸⁶ *NAL* Response at 52.

¹⁸⁷ Verizon explained, for example, that Aegis’ regular auditing “likely did not alert Aegis to a potential problem because: (i) Securus was using its profile for the approved use case to access location information for unauthorized purposes; (ii) nothing changed in the background check that Aegis maintained for Securus that would have prompted Aegis to question Securus’s credibility about following approved use cases; (iii) the number of location requests from Securus was consistent with the number that Aegis would expect from it (i.e., there were no spikes in data to raise a red flag); and (iv) the number of impacted Verizon customers was so small (and apparently only within two relatively limited time spans).” *NAL* Response at 22 (emphasis in original).

¹⁸⁸ See *NAL* Response at 21-25, 50-54.

¹⁸⁹ *NAL* Response at 51.

¹⁹⁰ See *NAL*, 35 FCC Rcd at 1721-23, paras. 75-79.

¹⁹¹ See *NAL* Response at 46, 48-50, 54-56.

¹⁹² See *NAL* Response at 49, 54-55.

contrary to the reasonableness standard reflected in that rule.¹⁹³ Rather, we have carefully examined Verizon's procedures, including the fundamental flaw that while Verizon's "system allegedly designed to monitor customer consents [it was] incapable of detecting its opposite."¹⁹⁴ Our assessment under section 64.2010(a) thus is a straightforward evaluation of reasonableness, consistent with the text of the rule.

3. Verizon Bore the Burden of Production

59. As an initial matter, the Commission notes that for the reasons discussed above and the analysis contained in the *NAL*, the preponderance of the evidence shows that Verizon did not use reasonable safeguards throughout the period of the violation.¹⁹⁵ As such, while the *NAL* discussed Verizon's burden of production to demonstrate that its protection of customer CPNI was reasonable,¹⁹⁶ that burden-shifting is not necessary given the preponderance of the evidence. Nonetheless, even if unnecessary to prove Verizon's violations in this matter, the *NAL* properly shifted the burden of production to Verizon.

60. First, as the *NAL* explained¹⁹⁷ and consistent with the *2007 CPNI Order*, where there is evidence of an unauthorized disclosure, the Commission will infer from that evidence that a carrier's practices were unreasonable unless the carrier offers evidence demonstrating that its practices were reasonable.¹⁹⁸ In the *NAL*, the Commission found that Verizon failed to demonstrate that its safeguards were reasonable following the disclosure of Securus's unauthorized location-finding service in May 2018.¹⁹⁹

61. Verizon acknowledges that the *NAL* based its approach on the *2007 CPNI Order*,²⁰⁰ explaining that "where an unauthorized disclosure has occurred . . . the responsible carrier then shoulders the burden of proving the reasonableness of its measures to protect consumer data."²⁰¹ However, Verizon is incorrect when it asserts that the *2007 CPNI Order* cannot support the burden-shifting approach in cases outside of the pretexting context.²⁰² The *2007 CPNI Order* afforded adequate notice of the application of burden-shifting in this case. The order did not expressly limit burden-shifting to the pretexting context, instead applying more broadly to unauthorized disclosures of CPNI. The rationale applies with equal force to the kind of disclosure at issue here, where a fundamental issue is whether Verizon had reasonable measures to ensure that its customers had in fact consented to the disclosure of their CPNI. Indeed, the breach in the instant case is analogous to pretexting in that it involved fraud in order to obtain access to CPNI.²⁰³ Broadly, in relation to Securus's entire unauthorized location-finding

¹⁹³ See *NAL Response* at 54-55.

¹⁹⁴ *NAL*, 35 FCC Rcd at 1720, para. 70.

¹⁹⁵ See *NAL*, 35 FCC Rcd at 1717-24, paras. 58-82.

¹⁹⁶ See *NAL*, 35 FCC Rcd at 1701-02, 1717, 1722, paras. 8, 59, 60, 76.

¹⁹⁷ See *NAL*, 35 FCC Rcd at 1701-02, para. 8.

¹⁹⁸ See *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 (noting that where there is evidence of an unauthorized disclosure, the Commission "will infer . . . that the carrier did not sufficiently protect that customer's CPNI" and that "[a] carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue").

¹⁹⁹ See *NAL*, 35 FCC Rcd at 1717-24, paras. 58-82.

²⁰⁰ See *NAL Response* at 43 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*)).

²⁰¹ *NAL*, 35 FCC Rcd at 1717, para. 59.

²⁰² See *NAL Response* at 43.

²⁰³ The breach at issue here arguably falls within the letter of criminal pretexting. See 18 U.S.C. § 1039.

service, Securus used the pretext that it was requesting location information from Verizon for its approved use case and that it had explicit customer opt-in consent for the disclosure. Likewise, Hutcheson used the pretext that he had legal authorization or consumer consent when requesting location information from Securus.²⁰⁴ Therefore, applying the burden-shifting to this case is appropriate even to the extent that the disclosures here could be said not to have been pretexting of the same form described in the *2007 CPNI Order*.

62. *Second*, Verizon admits that an evidentiary presumption is valid if the circumstances (here, a breach of CPNI) giving rise to that presumption make it “more likely than not” that the presumed fact (here, that CPNI safeguards were unreasonable) exists.²⁰⁵ The Commission finds that the unauthorized disclosure in this case gave rise to a rebuttable presumption that Verizon did not reasonably protect customer location information from unlawful access.²⁰⁶ As already discussed, the entire Securus location-finding program was based upon unauthorized disclosures. Though the disclosures to Hutcheson were particularly egregious (given they were essentially doubly unauthorized), *all* of the Securus requests made under the false guise of the approved use case and Verizon’s resultant disclosures of consumer location information were unauthorized. Verizon’s existing safeguards and oversight failed to notice and (absent the *New York Times* article) may have never realized that the unauthorized Securus location-finding program existed. Nonetheless, Verizon argues that the Commission cannot use the Securus and Hutcheson breaches to support shifting the burden of production to Verizon to provide evidence of the reasonableness of their post-May 2018 security practices.²⁰⁷ Specifically, Verizon asserts that because no provider can achieve perfection, “a single unauthorized disclosure of CPNI is a manifestly poor predictor of the reasonableness of a carrier’s measures to safeguard CPNI,” thus undercutting the reasonableness of any burden shifting here.²⁰⁸ We disagree.

63. In the *NAL*, we found that Verizon apparently violated section 222(c) of the Act and section 64.2007(b) of our rules in connection with its unauthorized disclosures of CPNI to Hutcheson.²⁰⁹ This is further bolstered by the Department of Justice’s case against Hutcheson.²¹⁰ And though the Commission opted to admonish Verizon only for the unauthorized disclosures made to Hutcheson, it would have been appropriate to admonish Verizon for all the disclosures it made to Securus in relation to the unauthorized location-finding service. In the *NAL*, we clearly explained that, pursuant to section 217 of the Act,²¹¹ carriers cannot disclaim their obligations to protect customer CPNI by delegating those

²⁰⁴ As explained in the *NAL*, “Hutcheson submitted thousands of unauthorized location requests via the Securus service between 2014 and 2017, in some cases ‘upload[ing] entirely irrelevant documents including his health insurance policy, his auto insurance policy, and pages selected from Sheriff training manuals’ in lieu of genuine legal process.” *NAL*, 35 FCC Rcd at 1709, para. 26; *see also supra* para. 14 (citing Hutcheson Sentencing Memo).

²⁰⁵ See *NAL* Response at 42.

²⁰⁶ *See 2007 CPNI Order*, 22 FCC Rcd at 6929, 6959, paras. 3, 63. A presumption is only permissible if there is “a sound and rational connection between the proved and inferred facts,” and when “proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact . . . until the adversary disproves it.” *Chemical Mfrs. Ass’n v. Department of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997) (quoting *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 788-89 (1990)) (internal citation and quotation marks removed).

²⁰⁷ *See NAL* Response at 42-44.

²⁰⁸ *NAL* Response at 43.

²⁰⁹ *See NAL*, 35 FCC Rcd at 1714, para. 49. “The evidence reflects that Hutcheson used the Securus service to obtain the location information of Verizon customers. Verizon shared the information with LocationSmart, which then shared it with 3Cinteractive, which then shared it with Securus . . .” *Id.* at 1714, para. 50.

²¹⁰ *See, e.g.*, Hutcheson Sentencing Memo.

²¹¹ 47 U.S.C. § 217.

obligations to third parties.²¹² In its NAL Response, Verizon does not dispute that a “third-party LBS provider in the location aggregator program breached its contractual obligations and—without Verizon’s knowledge or approval—apparently shared Verizon customer location data with an unauthorized party for an unauthorized purpose” in providing location data to Hutcheson.²¹³ We reiterate here that “Verizon is not absolved from liability simply because it was not directly responsible for operating the programs under which unauthorized disclosures occurred.”²¹⁴ Further, section 222(c)(1) of the Act²¹⁵ makes the responsibility for avoiding unauthorized disclosures a carrier obligation and prohibits use and disclosure except in certain narrow circumstances, without any reasonableness criterion. Verizon should, therefore, be able to justify any unauthorized disclosure. Given that multiple breaches occurred here and that the “reasonable measures” obligation is a *continuing* obligation, the Commission’s application of an evidentiary presumption based upon the disclosures involving Hutcheson and the imposition of a burden to produce evidence of reasonable protections during the relevant violations period was reasonable—particularly because, as discussed, those safeguards did not materially change in the interim timeframe.

64. *Third*, Verizon misinterprets the *NAL* when it argues that the Commission improperly shifted the burden of persuasion to the Company.²¹⁶ To the contrary, the Commission properly (and consistent with APA precedent) shifted only the burden of *production*, and not the burden of *persuasion*, to Verizon. The unauthorized disclosure at issue gave rise to a rebuttable presumption that Verizon did not adequately protect customer information from unlawful access. The burden of production then shifted to Verizon to offer evidence that it had reasonable safeguards in place.

65. Rather than taking reasonable steps to safeguard its customers’ location information after the Securus/Hutcheson disclosures were reported,²¹⁷ Verizon placed its customers’ location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers’ location information. For these reasons, we conclude that Verizon failed in its obligation under section 222 and our rules to have reasonable measures in place to discover and protect against attempts to gain unauthorized access to its customers’ CPNI.

D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent

66. After considering the evidence in the record, the relevant statutory factors, the Commission’s *Forfeiture Policy Statement*, and the arguments advanced by Verizon in the NAL Response, we find that Verizon is liable for a total forfeiture of \$46,901,250 for its violations of section

²¹² See *NAL*, 35 FCC Rcd at 1702, para. 9. Under section 217, “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.” 47 U.S.C. § 217.

²¹³ See *NAL* Response at 18. Verizon argues that Hutcheson’s unauthorized location lookups, which they concede apparently violated Securus’s legal obligations including safeguarding its customers’ CPNI, did not violate the Act or the Commission’s rules insofar as the information was shared as required by law under section 222(c)(1). *Id.* at 20 n.17. We find Verizon’s argument unavailing. Although Verizon speculates that some of the lookups may have had a law enforcement basis, those lookups were certainly not submitted through the appropriate channels for law enforcement requests, and Verizon cannot now claim that they were “required by law” when it did not treat them as such in the first place. Further, as explained in the *NAL*, “Securus did not . . . assess the adequacy of the purported legal authorizations submitted by users of its location-finding service.” *NAL*, 35 FCC Rcd at 1708, para.25.

²¹⁴ See *NAL*, 35 FCC Rcd at 1715, para.52; see also *id.* at 1716, para. 54 n.145 (explaining that where a carrier makes disclosures to a third party where the third party is not acting on behalf of the carrier to fulfill the relevant responsibilities of the carrier under section 222, the carrier’s disclosure of CPNI to the third party would be unauthorized in violation of section 222(c)(1)).

²¹⁵ 47 U.S.C. § 222(c)(1).

²¹⁶ See *NAL* Response at 40-42.

²¹⁷ Many of the possible reasonable steps were enumerated in the *NAL*. See *NAL*, 35 FCC Rcd at 1721-23, paras. 75-79.

222 of the Act and section 64.2010 of the Commission's rules—a reduction of \$1,417,500 from the \$48,318,750 forfeiture proposed in the *NAL*.²¹⁸ As explained in the *NAL*, this figure resulted from applying a base forfeiture of \$40,000 for the first day of each such violation and a \$2,500 forfeiture for the second and each successive day the violations continued (excluding the 30-day grace period granted by the Commission).²¹⁹ The Commission found in the *NAL* that Verizon apparently engaged in 65 continuing violations—one for each ongoing relationship with a third-party LBS provider or aggregator that had access to Verizon customer location information more than 30 days after publication of the *New York Times* report—and that each violation continued until Verizon terminated the corresponding entity's access to customer location information.²²⁰ Using this methodology, the Commission found Verizon apparently liable for a total base forfeiture of \$32,215,500. Upon considering the nature of the violations and the risk of harm they posed to consumers, the Commission then applied a 50% upward adjustment to the base forfeiture amount, resulting in a total proposed forfeiture of \$48,318,750.²²¹

67. Verizon challenges these forfeiture calculations with five principal arguments. *First*, Verizon asserts that it did not engage in any “willful” violations and suggests that any forfeiture penalty should take such non-willfulness into account.²²² *Second*, Verizon claims that it would be arbitrary and capricious to impose a forfeiture under section 222 when there had been no unauthorized disclosures during the limitation period.²²³ *Third*, Verizon argues that the *NAL* describes at most a single continuing violation, not a separate violation for each of the 65 entities participating in Verizon's LBS program. As such, according to Verizon, the forfeiture exceeds the applicable statutory maximum.²²⁴ *Fourth*, Verizon argues that even if the Commission could calculate the forfeiture based upon the number of LBS providers and how long they had access to customer location information, the proposed forfeiture relies upon incorrect facts and therefore is calculated incorrectly. Specifically, Verizon states that a number of LBS program participants ceased accessing Verizon customer location information before the dates identified in the *NAL*, and two of them never actually participated in the program in the first place.²²⁵ *Fifth* and finally, Verizon challenges the Commission's application of a 50% upward adjustment to the base forfeiture, claiming both that it rests upon a misunderstanding of an internal Verizon document and that it impermissibly cites to the same factors used for determining the base forfeiture amount.²²⁶

68. As we discuss below, to account for the non-participation in Verizon's LBS program of two entities that were included in the original forfeiture calculation, we reduce the forfeiture proposed in the *NAL* by \$1,417,500. However, we are not persuaded by any of Verizon's other arguments and decline to cancel or further reduce the forfeiture proposed in the *NAL*.

1. Verizon Willfully Violated the Act and the Commission's Rules

69. According to Verizon, the *NAL* does not establish that it engaged in “willful” violations of section 222 and the Commission's rules. Verizon asserts that because it took steps to safeguards its customers' information and “did not consciously or deliberately fail to act to protect CPNI,” it cannot be

²¹⁸ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

²¹⁹ *NAL*, 35 FCC Rcd at 1726, para. 86.

²²⁰ *NAL*, 35 FCC Rcd at 1726, para. 87.

²²¹ *NAL*, 35 FCC Rcd at 1727-28, paras. 90-93.

²²² *NAL* Response at 56.

²²³ *NAL* Response at 56-57.

²²⁴ *NAL* Response at 57-58.

²²⁵ *NAL* Response at 57-58.

²²⁶ *NAL* Response at 57-58.

said to have “willfully” violated any requirement.²²⁷ Thus, Verizon maintains, the *NAL* in actuality bases the penalty on section 503(b)’s “repeated” prong, and any forfeiture should reflect that.

70. These arguments lack merit. The term “willful,” as used in section 503(b) of the Act, does not have the restrictive meaning that Verizon would assign to it. As the Commission has previously stated:

... the word “willfully,” as employed in Section 503(b), does not require a showing that the [party] knew he was acting wrongfully; it requires only that the Commission establish that the licensee knew that he was doing the acts in question – in short, that the acts were not accidental (such as brushing against a power knob or switch).²²⁸

71. Verizon’s invocation of *Telrite*, which provides that a violation is “willful” if it involves “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate the law,”²²⁹ does not persuade us otherwise. As *Telrite* provides, the issue is not whether Verizon *intended* to violate the law, but whether it deliberately engaged in the acts or omissions that the Commission found to have constituted an apparent violation of the law. Verizon does not dispute that it designed, implemented, and operated its LBS program or that it is responsible for that program’s structure and performance. Therefore, because the Commission found that the safeguards that Verizon had in place for customer location information—as consciously and deliberately implemented by Verizon—did not meet the requirements of section 222 of the Act and section 64.2010 of the Commission’s rules, then Verizon “willfully” violated those provisions.

72. Furthermore, as Verizon acknowledges, section 503(b) applies when a carrier “willfully or repeatedly” fails to comply with an applicable requirement,²³⁰ and does not require that both prongs of the clause be met. Thus, even if Verizon had not engaged in “willful” violations, a forfeiture penalty under section 503(b) still would be appropriate. But, as discussed, Verizon’s failure to have reasonable protections in place for customer location information was “willful” for purposes of section 503. And, by continuing to operate its LBS program in the absence of reasonable safeguards, Verizon both willfully and repeatedly²³¹ violated section 222 of the Act and section 64.2010 of the Commission’s rules.

2. The Commission Did Not Need to Find Unauthorized Access to CPNI During the Limitations Period

73. Verizon challenges as arbitrary and capricious the imposition of a forfeiture penalty for when there has been no “actionable unauthorized disclosure” and claims that, at a minimum, the Commission should have taken this into account when setting the base forfeiture.²³² Verizon also contends that the base forfeiture amounts of \$40,000 for the first day of a violation and \$2,500 for the second and each successive day that the violation continued are so excessive as to be arbitrary and

²²⁷ NAL Response at 56.

²²⁸ *Midwest Radio-Television Inc.*, *Memorandum Opinion and Order*, 40 F.C.C. 163, 167, para. 11 (1963). *See also Playa Del Sol Broadcasters*, *Order on Review*, 28 FCC Rcd 2666, 2667-68, paras. 4, 6 (2013); *USA Teleport, Inc.*, *Memorandum Opinion and Order*, 26 FCC Rcd 6431, 6434, para. 9 (EB 2011).

²²⁹ NAL Response at 28 (citing *Telrite Corp.*, *Notice of Apparent Liability for Forfeiture & Order*, 23 FCC Rcd 7231, para. 12 (2008) (quoting 47 U.S.C. § 312(f)(1)) (alteration in original)).

²³⁰ 47 U.S.C. § 503(b)(1)(B) (emphasis added).

²³¹ For the purposes of section 503, “repeated” only requires that a party acted (or failed to act) more than once or, if the act or failure to act is continuous, for more than one day. *See, e.g., Playa Del Sol Broadcasters*, *Order on Review*, 28 FCC Rcd 2666, 2668, para. 4 (2013).

²³² NAL Response at 56-57.

capricious given that, among other considerations, no unauthorized disclosure occurred during the limitations period.²³³

74. We reject this argument. The forfeiture here is based not upon any unauthorized disclosures (which, in the case of Hutcheson, occurred outside the limitations period) but rests upon Verizon's subsequent conduct—namely, how “[a]fter learning of Hutcheson’s practices, Verizon placed its customers’ location information at continuing risk of unauthorized access through its failure to expeditiously terminate its program or impose reasonable safeguards to protect its customers’ location information.”²³⁴

75. Moreover, with respect to the specific amounts chosen for the base forfeiture, these figures were neither excessive nor arbitrary and capricious, but reflected the Commission’s careful consideration of the relevant statutory factors. Section 503 of the Act requires the Commission to “. . . take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³⁵ The plain language of the statute provides the Commission with broad discretion to assess proposed penalties based on the statutory factors, up to the statutory maximum.

76. In selecting the base forfeitures that it did, the Commission explained that the chosen amounts “(1) . . . provide a meaningful distinction between the violations in this case and those of other cases involving less egregious facts; and (2) . . . provide consistency with other consumer protection cases involving serious harm to consumers.”²³⁶ The Commission also found that “this base forfeiture appropriately deters wrongful conduct and reflects the increased risk consumers face when their information is not secured in a timely manner.”²³⁷ Given the broad discretion afforded to the Commission under section 503, as well as the *NAL*’s examination of how the relevant statutory factors intersected with the facts of this case, we reject Verizon’s claim that the Commission acted arbitrarily or capriciously in setting the base forfeiture amount.

3. The Commission Reasonably Found that Verizon Engaged in 65 Continuing Violations

77. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against Verizon of up to \$204,892 for each day of a continuing violation, up to a statutory maximum of \$2,048,915 “for any single act or failure to act.”²³⁸ The Commission found that, because Verizon permitted 65 separate entities to access its customers’ location information in the apparent absence of reasonable safeguards, the Company engaged in 65 continuing violations of section 222 of the Act and section 64.2010 of the Commission’s rules. Verizon challenges this methodology, arguing that “[e]ither Verizon took reasonable measures with respect to the location aggregator program, or it did not,” and contends that “the number of entities is irrelevant to that analysis.”²³⁹ Verizon therefore asserts that there could have been at most one continuing violation (subject to the \$2,048,915 penalty cap) and the *NAL*’s

²³³ *NAL* Response at 56-57.

²³⁴ *NAL*, 35 FCC Rcd at 1724, para. 82.

²³⁵ 47 U.S.C. § 503(b).

²³⁶ *NAL*, 35 FCC Rcd at 1726, para. 86.

²³⁷ *NAL*, 35 FCC Rcd at 1726, para. 86.

²³⁸ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any 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 19-1325 (EB 2019).

²³⁹ *NAL* Response at 57.

finding of 65 separate continuing violations (one for each LBS provider or Aggregator) constitutes an impermissible attempt to circumvent the statutory maximum.²⁴⁰

78. We reject this argument. Neither section 503(b) nor the forfeiture guidelines in section 1.80 of the Commission's rules speak to the application of the phrase "single act or failure to act," or otherwise to the calculation of the number of violations, in the CPNI or data security context.²⁴¹ Moreover, in calculating a proposed penalty under section 222, the Commission previously applied a methodology under which a systemic failure to protect customer information constituted significantly more than a single violation. In *TerraCom*, the Commission stated that "[e]ach document containing [proprietary information] that the Companies failed to protect constitutes a separate violation for which a forfeiture may be assessed."²⁴² The Commission further observed that "[e]ach unprotected document constitutes a continuing violation that occurred on each of the 81 days [until] the date that the Companies remedied the failure" ²⁴³

79. The Commission in *TerraCom* elected to ground its forfeiture calculation in the number of unprotected documents (which it "conservatively estimate[d]" as more than 300,000),²⁴⁴ but that approach was not mandated under section 503, section 222, or the Commission's rules. Similarly, in this case, the Commission reasonably exercised its authority to find that each unique relationship between Verizon and an LBS provider or aggregator represented a distinct failure to reasonably protect customer CPNI and therefore a separate violation of section 222 of the Act and section 64.2010 of the Commission's rules. Each such relationship relied upon a distinct and unique contractual chain (from Verizon to the Aggregator, then from the Aggregator to the LBS provider) and was premised to involve a specific, individually-approved "Use Case" that had been reviewed and authorized by Verizon. Treating these separate channels for the disclosure of location information—each of which, although unique, suffered from the same fundamental vulnerabilities discussed in the *NAL* and above—as separate violations was thus rational and properly within the Commission's discretion.

80. The approach taken in the *NAL* was not only reasonable, it was—contrary to Verizon's claim that it exceeded the statutory maximum—eminently *conservative*. As described in the *NAL*, Verizon's practices placed the sensitive location information of *all* of its customers at unreasonable risk of unauthorized disclosure. As such, the Commission could well have chosen to look to the total number of Verizon subscribers when determining the number of violations (and under that analysis, the violations presumably would have continued until the very last LBS provider's access to customer location information was cut off).²⁴⁵ Using that methodology—and taking into account the tens of millions of consumers whose highly sensitive location information was made vulnerable by Verizon—would have resulted in a significantly higher forfeiture than what was proposed in the *NAL*.

81. Furthermore, even under the framework applied in the *NAL*, the Commission could have calculated the proposed forfeiture based upon every single entity with access to Verizon customer location information up to the statutory maximum (\$204,892 per day up to \$2,048,915 for each and every

²⁴⁰ NAL Response at 58.

²⁴¹ 47 U.S.C. § 503(b); 47 CFR § 1.80(b).

²⁴² *TerraCom*, 29 FCC Rcd at 13343, para. 50.

²⁴³ *TerraCom*, 29 FCC Rcd at 13343, para. 50.

²⁴⁴ *TerraCom*, 29 FCC Rcd at 13343, para. 52. The Commission's investigation into apparent violations of consumer privacy requirements in *TerraCom* was resolved by a consent decree in which the companies admitted to violating sections 201(b) and 222(a) of the Act. See *TerraCom, Inc. and YourTel America, Inc.*, Order and Consent Decree, 30 FCC Rcd 7075, 7084, at para. 20 (EB 2015).

²⁴⁵ Although it involved a data breach—and not, as in this case, an ongoing failure to maintain reasonable safeguards such that customer data was placed at unreasonable risk of unauthorized disclosure—*TerraCom* supports applying a customer-centric forfeiture calculation that takes into account the number of customers whose data was inadequately protected. See *TerraCom*, 29 FCC Rcd at 13343, para. 50.

LBS provider). That would have resulted in a far higher fine than the approach that was taken (applying a \$40,000 forfeiture for the first day of the violation and a \$2,500 forfeiture for each successive day the violation continued). Instead, the Commission took a conservative approach, giving Verizon a 30-day grace period with no fines assessed, limiting the number of continuing violations to every day that each related LBS provider operated in the apparent absence of reasonable measures to protect CPNI and therefore left Verizon customers' CPNI vulnerable to unlawful disclosure, and assessing a far lower fine per day for the continuing violations than it could have. This approach recognized the Commission's need to show that such violations are serious and ensured the proposed forfeiture amounts act as a powerful deterrent for future failures to reasonably protect CPNI.

82. We also reject any claim that Verizon's due process rights were violated because it lacked fair notice that its LBS practices would potentially make it liable for a penalty in excess of the \$2,048,915 statutory maximum for a single continuing violation. Consistent with our earlier discussion of Verizon's fair notice claims,²⁴⁶ we find that this argument lacks merit. Customer location information is CPNI that is subject to protection under section 222 of the Act and section 64.2010 of the Commission's rules. Verizon knew, or should have known, that failing to reasonably protect CPNI carries with it significant potential penalties that may be associated with more than one violation. Indeed, the Commission has in the past proposed penalties for what could be viewed as a system-wide violation on a more granular basis that would yield higher penalties that would result from treating the violation as a single continuing violation.²⁴⁷ Independently, we observe that the penalties at issue here are governed by section 503 of the Act, with which we fully comply in our decision.²⁴⁸ As the D.C. Circuit has recognized, where a statute specifies maximum penalties, the statute itself provides fair notice of all penalties within that limit.²⁴⁹

4. The Commission Will Reduce the Forfeiture Amount by \$1,417,500

83. Verizon asserts that even if the Commission's forfeiture methodology is permissible, the calculations in the *NAL* are based on incorrect facts. Specifically, for the 65 entities whose ongoing access to customer location information factored into the forfeiture amount, the *NAL* cites two separate termination dates (one for 60 of the entities and the other for the remaining 5).²⁵⁰ According to Verizon, "a number of those third parties actually ceased accessing any location information before those dates."²⁵¹ Verizon's claim is supported by a Declaration and Exhibit that purport to show the "Date of Last Location Access/Request" for each LBS entity, a number of which fall upon dates prior to those listed in the *NAL*.²⁵²

84. We are not persuaded that this merits a reduction in the forfeiture amount. The calculations in the *NAL* were not based on when Verizon actually transmitted customer location information to particular LBS providers. Rather, it was those entities' *ability* to access location information at the time of their choosing, and in the apparent absence of reasonable safeguards, that the forfeiture calculation was based upon. The fact that certain providers may not have exercised that ability (which they retained until the termination dates set forth in the *NAL*) does not affect our analysis.

²⁴⁶ See *supra* 22.

²⁴⁷ See, e.g., *TerraCom*, 29 FCC Rcd at 13343, paras. 51-52.

²⁴⁸ 47 U.S.C. § 503.

²⁴⁹ *Pharon v. Bd. of Gov. of the Fed. Reserve*, 135 F.3d 148, 157 (D.C. Cir. 1998) (applying *BMW of North Am. v. Gore*, 517 U.S. 559 (1996), to a penalty assessed by the Board and concluding that the relevant statutory maximum penalty provisions provided adequate notice).

²⁵⁰ *NAL*, 35 FCC Rcd at 1726, para. 86.

²⁵¹ *NAL* Response at 58.

²⁵² *NAL* Response, Exhibits A and D.

85. Verizon also contends that two of the entities whose participation in the LBS program factored into the forfeiture calculation “never actually participated in the program in the first place.”²⁵³ Verizon explains that “[t]wo of the entities identified in VZ’s LOI Responses . . . applied to and were approved for participation in the Verizon location aggregator program and, therefore, were included on customer / participant lists, but did not fully integrate to the location platform and never received any subscriber location data in connection with the program.”²⁵⁴

86. In developing the *NAL*, the Commission relied upon the information furnished to it by Verizon, including a listing of LBS program participants, and reasonably expected that information to be accurate and complete. Nonetheless, in light of the additional details provided by Verizon in the *NAL* Response, we now exercise our discretion to reduce the forfeiture amount to reflect the fact that two of the 65 entities cited in the *NAL* did not actually participate in the program (and therefore did not have access to customer location information). The *NAL* assigned a base forfeiture of \$472,500 for each of those two entities (\$40,000 for the first day of the continuing violation and \$2,500 for each of the subsequent 173 days, or \$40,000 plus \$432,500, totaling \$472,500). The combined base forfeiture for the two providers is therefore \$945,000. The *NAL* applied a 50% upward adjustment to that amount, or an additional \$472,500, for a total associated forfeiture of \$1,417,500. Accordingly, we now reduce the total forfeiture proposed in the *NAL* by \$1,417,500.

5. The Upward Adjustment is Permissible and Warranted

87. Verizon argues that the Commission impermissibly based the 50% upward adjustment to the forfeiture amount proposed in the *NAL* on the same factors that were considered in setting the base forfeiture.²⁵⁵ Verizon also contends that, in determining the amount of the upward adjustment, the Commission misconstrued the significance of an internal Verizon document and the record-matching reports provided by Aegis and erred in describing the severity of the risk that Verizon’s LBS program posed to the Company’s customers.²⁵⁶

88. We reject these arguments and maintain the 50% upward adjustment proposed in the *NAL*. With regard to the upward adjustment, section 503 of the Act requires the Commission to “. . . take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁵⁷ The plain language of the statute provides the Commission with broad discretion to assess proposed penalties based on the statutory factors, up to the statutory maximum. Moreover, section 1.80 of the Commission’s rules provides a list of possible factors the Commission may use when making a determination to adjust upward or adjust downward the base forfeiture.²⁵⁸ These factors include, importantly, “egregious misconduct,” “substantial harm,” “repeated or continuous violation,” and “ability to pay/relative disincentive,” among others.²⁵⁹

89. The Commission weighed these factors when making the determination that the base forfeiture in this case merited a substantial upward adjustment. Verizon’s conduct was egregious; the *NAL* detailed how Verizon failed to respond to indications that its consent record audit process, as well as

²⁵³ *NAL* Response at 58.

²⁵⁴ *NAL* Response, Exhibit D, n. 5.

²⁵⁵ *NAL* Response at 59.

²⁵⁶ *NAL* Response at 58-59.

²⁵⁷ 47 U.S.C. § 503(b).

²⁵⁸ 47 CFR § 1.80(b)(10), Table 3.

²⁵⁹ *Id.*

its overall system for obtaining customer consent for the disclosure of location information, was faulty.²⁶⁰ Further, revelations in the press about Securus' hidden location information program led to a public outcry and prompted inquiries from members of Congress concerned about carriers' apparent lack of control over highly sensitive location information.²⁶¹ Its failure to adequately protect CPNI for a protracted amount of time caused substantial harm by making it possible for "malicious persons to identify the exact locations of Verizon subscribers who belong to law enforcement, military, government, or other highly sensitive positions—thereby threatening national security and public safety"—a threat illustrated by reports that Hutcheson used location information to obtain the precise location of multiple Missouri State Highway Patrol officers on numerous occasions.²⁶² The violations were continuous over an extended period of time and repeated with two Aggregators and multiple LBS providers. Finally, the Commission took into account Verizon's status as a major telecommunications provider to determine what penalty, when applied, would adequately provide Verizon with the necessary disincentive to engage in similar conduct again in the future. These considerations, taken into account as the Commission lawfully exercised its statutory authority to weigh the relevant factors, justify the resulting upward adjustment. Verizon's arguments to the contrary do not defeat Congress's decision to grant the FCC the power to weigh the factors and make such adjustments "as justice may require."²⁶³ Nor do Verizon's arguments persuade us that the 50% upward adjustment, which is in line with upward adjustments in other cases involving consumer harms,²⁶⁴ was unwarranted.

E. Section 503(b) Is Employed Here Consistent With the Constitution

90. We reject Verizon's supplemental constitutional objections that: (1) the FCC combines investigatory, prosecutorial, and adjudicative roles in violation of constitutional due process

²⁶⁰ For the reasons discussed earlier, we reject Verizon's claim that the Commission drew the wrong conclusions from the Aegis audit and consent-matching materials discussed in the NAL. See *supra* III.C.1-2.

²⁶¹ See e.g., Letter from Sen. Ronald L. Wyden, Senator, U.S. Senate, et al., to Joseph J. Simons, Chairman, Federal Trade Commission, and Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2019) (on file in EB-TCD-18-00027704) (this Congressional was signed by 15 United States senators); Letter from Rep. Frank J. Pallone, Jr., Chairman, U.S. House of Representatives Committee on Energy and Commerce, to Ajit Pai, Chairman, Federal Communications Commission (Jan. 11, 2019) (on file in EB-TCD-18-00027704); Maria Dinzeo, *Class Claims AT&T Sold Their Real-Time Locations to Bounty Hunters*, Courthouse News Service (July 16, 2019), <https://www.courthousenews.com/class-claims-att-sold-their-real-time-locations-to-bounty-hunters/>; Brian Barrett, *A Location-Sharing Disaster Shows How Exposed You Really Are*, Wired (May 19, 2018), <https://www.wired.com/story/locationsmart-securus-location-data-privacy/>; Press Release, New America's Open Technology Institute, *Privacy Advocates Call on FCC to Hold Wireless Carriers Accountable for Selling Customer Location Information to Third Parties Without Consent* (June 14, 2019), <https://www.newamerica.org/oti/press-releases/privacy-advocates-call-fcc-hold-wireless-carriers-accountable-selling-customer-location-information-third-parties-without-consent/> (announcing that New America's Open Technology Institute, the Center on Privacy & Technology at Georgetown Law, and Free Press had filed a complaint with the FCC regarding the sale and disclosure of customer location information by Verizon, AT&T, T-Mobile, and Sprint).

²⁶² *NAL*, 35 FCC Rcd at 1728, para. 91. Verizon argues that it was not possible under its LBS program for a third party to identify customers' "exact locations." *NAL* Response at 59. We do not intend to quibble over the precision of the location-finding that Verizon's program had enabled. There is no question that it allowed for determining the location of law enforcement personnel, including whether they were in a certain area or vicinity. It is not difficult to imagine how this capability is susceptible to abuse.

²⁶³ 47 U.S.C. § 503(b).

²⁶⁴ See, e.g., *Scott Rhodes*, Forfeiture Order, 36 FCC Rcd 705, 728, at para. 54 (2021) (upward adjustment equaling 100% of base forfeiture amount on robocaller/spoofers who made targeted robocalls designed to harass victims); *John C. Spiller, et al.*, Forfeiture Order, 36 FCC Rcd 6225, 6257, at para. 59 (2021) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4671, at para. 25, 4674, at para. 33 (2018) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities).

requirements;²⁶⁵ (2) the issuance of a forfeiture order by the Commission would violate Article III and the Seventh Amendment;²⁶⁶ and (3) the Commission's ability to choose a procedural approach to enforcement under section 503(b) of the Act is an unconstitutional delegation of legislative power.²⁶⁷ Verizon's arguments are premised on misunderstandings regarding the relevant statutory framework, the nature of the Commission's actions, and relevant precedent.

91. As a threshold matter, Verizon neglects key aspects of the statutorily-mandated enforcement process applicable here. Pursuant to section 504 of the Act, after the Commission issues a forfeiture order, Verizon is entitled to a trial *de novo* in federal district court before it can be required to pay the forfeiture.²⁶⁸ Verizon's objection to the combination of investigatory, prosecutorial, and adjudicative roles in the FCC ignores that statutory entitlement to a trial *de novo* in federal district court to ultimately adjudicate its obligation to pay a forfeiture.²⁶⁹ Likewise, Verizon's claim that a forfeiture order issued under section 503(b) of the Act does not provide it a decision by an Article III court, including via a trial by jury, ignores Verizon's statutory right to a trial *de novo* before it can be required to pay the forfeiture.²⁷⁰ The statutory right to a trial *de novo* provided for by section 504 of the Act is itself sufficient grounds to reject those two constitutional claims.

92. Independently, there are sufficient grounds to reject Verizon's arguments for other reasons, as well. We discuss each of these in turn below.

93. *Combination of Functions.* With respect to Verizon's claimed due process violation,²⁷¹ Verizon fails to demonstrate sufficient grounds for concluding that a combination of functions in the Commission's enforcement process here renders it constitutionally suspect, even apart from Verizon's failure to account for the trial *de novo* under section 504 of the Act. It is true that "a 'fair trial in a fair tribunal is a basic requirement of due process,'" but objections in that regard premised on the combination of functions in an agency "must overcome a presumption of honesty and integrity in those serving as

²⁶⁵ Letter from Scott H. Angstreich, counsel to Verizon, to Michael Epshteyn and Rosemary Cabral, Enforcement Bureau, FCC, EB-TCD-18-00027698, at 2 (filed June 22, 2023) (Verizon June 22, 2023 Supplemental NAL Response).

²⁶⁶ Verizon June 22, 2023 Supplemental NAL Response at 2.

²⁶⁷ Verizon June 22, 2023 Supplemental NAL Response at 2-3.

²⁶⁸ 47 U.S.C. § 504(a); *see also, e.g., Ill. Citizens Comm. for Broadcasting v. FCC*, 515 F.2d 397, 405 (D.C. Cir. 1974) (noting that "a jury trial was available" in an action to collect a forfeiture). That Verizon theoretically might elect to pay the forfeiture voluntarily does not diminish its statutory right to a trial *de novo* in federal district court.

²⁶⁹ *See, e.g., Concrete Pipe & Prods. of Cal. v. Construction Lab. Pension Trust for S. Cal.*, 508 U.S. 602, 618 (1993) ("Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator to 'conduct a *de novo* review of all factual and legal issues.'").

²⁷⁰ *Cf. Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25, 38-40 (2014) (where a claim raised before a bankruptcy court implicates the judicial power under Article III of the constitution, the bankruptcy court can make proposed findings of fact and conclusions of law for *de novo* review by a federal district court, and even if a bankruptcy court adjudicates such a claim itself, *de novo* review of that decision by a federal district court resolved any Article III concern); *Crowell v. Benson*, 285 U.S. 22, 50-65 (1932) (even in the case of private rights, an agency can make factual findings and render an initial decision of law subject to *de novo* review of issues of jurisdictional fact and of law in an Article III court).

²⁷¹ Verizon June 22, 2023 Supplemental NAL Response at 2.

adjudicators.”²⁷² To overcome that presumption requires “a showing of conflict of interest or some other specific reason for disqualification.”²⁷³

94. Verizon fails to demonstrate a concern specific to the Commission’s forfeiture order here sufficient to overcome the presumption of honesty and integrity. Insofar as Verizon notes the existence of pending due process claims premised on the combination of functions involving another agency, we are not persuaded to treat those still-pending unadjudicated arguments as warranting the conclusion that there is a genuine due process concern here.²⁷⁴

95. Verizon also expresses concern that “the Commission performs its own investigations of alleged violations, prosecutes them by taking enforcement action and issuing an NAL, and adjudicates the merits of any challenges to the NAL in imposing a forfeiture.”²⁷⁵ But these broad-brush objections do not identify specific reasons that a reasonable adjudicator in the Commission’s position would be biased in this proceeding—certainly not one sufficient to overcome the background presumption of honesty and integrity on the part of agency adjudicators. To the contrary, finding a due process violation based simply on those would, in large part, turn that background presumption on its head by requiring a presumption of bias whenever the Commission issued an NAL. Such an understanding would be at odds with the range of scenarios where courts have found no due process concerns with adjudication by individuals despite earlier involvement in a matter.²⁷⁶

96. Nor are we otherwise persuaded that due process concerns are present here. The potential to adopt forfeitures—even substantial forfeitures—that would be paid into the U.S. Treasury does not create a risk of financial bias on the part of reasonable adjudicators in the Commission’s position.²⁷⁷ We also are not persuaded that the Commission’s decision to issue an NAL proposing even a

²⁷² *Withrow v. Larkin*, 421 U.S. 35, 46, 47 (1975); see also, e.g., *id.* at 47-48 (discussing *FTC v. Cement Institute*, 333 U.S. 683 (1948), where the Court found no due process violation based on the adjudicators’ prior investigations, including stated opinions about the legality of certain pricing systems, because “[t]he fact that the Commission had entertained such views as the result of its prior ex parte investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of the respondents’ basing point practice” and in the adjudication at issue “members of the cement industry were legally authorized participants in the hearings” and submit evidence and arguments in defense of their positions); *In re Zdravkovich*, 634 F.3d 574, 579 (D.C. Cir. 2011) (“In *Withrow v. Larkin*, the Supreme Court expressly rejected the claim that due process is violated where ‘[t]he initial charge or determination of probable cause and the ultimate adjudication’ are made by the same agency.”); *Ethicon Endo-Surgery v. Covidien*, 812 F.3d 1023, 1029-30 (Fed. Cir. 2016) (observing that “[l]ower courts have also rejected due process challenges to systems of adjudication combining functions in an agency,” and collecting illustrative cases).

²⁷³ *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); see also, e.g., *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 881 (2009) (the due process inquiry is “whether the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional ‘potential for bias’”).

²⁷⁴ See Verizon June 22, 2023 Supplemental NAL Response at 2 (citing the pending constitutional challenge involving the FTC underlying *Axon Enterprise v. FTC*, 143 S. Ct. 890 (2023)).

²⁷⁵ Verizon June 22, 2023 Supplemental NAL Response at 2.

²⁷⁶ For example, the Supreme Court in *Withrow v. Larkin* observed that “judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact,” and “the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court,” noting also that “a hearing examiner who has recommended findings of fact after rejecting certain evidence as not being probative was not disqualified to preside at further hearings that were required when reviewing courts held that the evidence had been erroneously excluded.” *Withrow v. Larkin*, 421 U.S. at 48-49 (internal quotation marks omitted). The Court’s willingness to accept continued adjudicator participation even where final—not merely preliminary—decisions previously had been made by the adjudicators strongly supports our analysis here.

²⁷⁷ See, e.g., *Ward v. Village of Monroeville*, 409 U.S. 57, 59-61 (1972) (“[T]he test is whether the [decisionmaker’s] situation is one ‘which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . . ,’” and due process was violated where a mayor acted as an adjudicator and also obtained a (continued....)

significant forfeiture is likely to create the risk of bias in the Commission’s subsequent decision regarding a forfeiture order. Although the Supreme Court has stated in the context of criminal prosecutions that “there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case,” we find even a significant proposed forfeiture materially distinguishable from the imposition of criminal penalties—particularly the death penalty.²⁷⁸ For example, we are not persuaded that the Commission’s decision to propose a forfeiture in an NAL creates the same degree of risk of an adjudicator becoming “psychologically wedded” to that proposal as in the case of a prosecutor’s decision to authorize prosecutors to seek the death penalty, nor does Verizon provide evidence that is the case here.²⁷⁹ We also do not find that the NAL-initiated enforcement process presents the risk of adjudicators acting on the basis of extra-record information or impressions of the respondent that the Court found of concern in the case of a criminal prosecutor then serving as a judge.²⁸⁰ In particular, section 503(b) requires a Commission NAL to “set forth the nature of the act or omission charged . . . and the facts upon which such charge is based,”²⁸¹ and Verizon has not identified concerns about the decision here being premised on extra-record evidence obtained by the Commission or commissioners in the development of the NAL.

97. *Trial By Jury.* We also reject Verizon’s contention that adjudication of the violations at issue here may not constitutionally be assigned to a federal agency.²⁸² The Seventh Amendment preserves “the right of trial by jury” in “Suits at common law, where the value in controversy shall exceed twenty dollars,”²⁸³ but the Seventh Amendment applies only to suits litigated in Article III courts, not to administrative adjudications conducted by federal agencies.²⁸⁴ In determining whether an adjudication involves an exercise of judicial power vested in the federal courts under Article III of the constitution, the Supreme Court has distinguished between “public rights” and “private rights.”²⁸⁵ Congress has broad authority to “assign adjudication of public rights to entities other than Article III courts.”²⁸⁶ Examples of “public rights” litigation involving “cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact” include enforcement of

portion of the fees and costs he imposed in that role, whereas due process was not violated where a mayor acted as an adjudicator but “the Mayor’s relationship to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.”); *Brucker v. City of Doraville*, 38 F.4th 876, 884 (11th Cir. 2022) (“The fact that a judge works for a government, which gets a significant portion of its revenues from fines and fees, is not enough to establish an unconstitutional risk of bias on the part of the judge.”).

²⁷⁸ *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (finding a due process violation where the judge previously had been involved as a prosecutor in authorizing the prosecution to seek the death penalty).

²⁷⁹ See *Williams v. Pennsylvania*, 579 U.S. at 9 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty).

²⁸⁰ See *Williams v. Pennsylvania*, 579 U.S. at 9-10 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty and also citing *In re Murchison*, 349 U.S. 133, 138 (1955), which involved an individual acting in the role of both a grand jury and judge where similar concerns arose); see also, e.g., *Withrow v. Larkin*, 421 U.S. at 54 (explaining that “Murchison has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications”).

²⁸¹ 47 U.S.C. § 503(b)(4).

²⁸² AT&T June 22, 2023 Supplemental NAL Response at 2-3.

²⁸³ U.S. Const. amend. VII.

²⁸⁴ See, e.g., *Oil States Energy Services v. Greene’s Energy Group*, 138 S. Ct. 1365, 1379 (2018); *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442, 455 (1977).

²⁸⁵ *Oil States*, 138 S. Ct. at 1373 (citation omitted).

²⁸⁶ *Id.*

federal workplace safety requirements,²⁸⁷ “adjudicating violations of the customs and immigration laws and assessing penalties based thereon,”²⁸⁸ adjudicating “whether an unfair labor practice had been committed and of ordering backpay where appropriate,”²⁸⁹ and the grant or reconsideration of a grant of a patent.²⁹⁰ That precedent confirms the constitutionality validity of FCC adjudication of violations of the Communications Act, even setting aside the reality that Verizon does, in fact, have the right of a trial *de novo* under section 504 of the Act here. Through section 222 of the Communications Act, Congress “created new statutory obligations”²⁹¹ designed to protect consumer privacy even as the communications marketplace became more open to competition,²⁹² analogous to those previously identified as involving public rights. Congress further “provided for civil penalties” for violations of those obligations, and constitutionally could entrust to the Commission “the function of deciding whether a violation has in fact occurred” when deciding whether to issue a forfeiture order, bringing it well within the “public rights” framework of existing Supreme Court precedent.²⁹³

98. Relying principally on the Supreme Court’s decision in *Tull v. United States* and the Fifth Circuit’s decision in *Jarkesy*, Verizon contends that the forfeiture at issue here should fall within the “private rights” framework—requiring adjudication in an Article III court, with the right to a trial by jury.²⁹⁴ In *Tull*, the government was pursuing a claim in federal district court seeking penalties and an injunction under the Clean Water Act and the district court had denied the defendant’s request for a jury trial.²⁹⁵ But as the Supreme Court also has made clear, Congress can assign matters involving public rights to adjudication by an administrative agency “even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead.”²⁹⁶ Thus, *Tull* does not address the question of whether Congress can assign the adjudication of a given matter to an administrative agency—it speaks only to the Seventh Amendment implications of a matter that is assigned to an Article III court. To the extent that the Fifth Circuit in *Jarkesy* treated *Tull* as standing for the proposition that causes of action analogous to common-law claims would, as a general matter, need to be adjudicated in Article III courts with a right to trial by jury, we are unpersuaded. As the Supreme Court has held in a post-*Tull* decision, “Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their

²⁸⁷ *Atlas Roofing*, 430 U.S. at 450, 461.

²⁸⁸ *Id.* at 451.

²⁸⁹ *Id.* at 453.

²⁹⁰ *Oil States*, 138 S. Ct. at 1373.

²⁹¹ *Atlas Roofing*, 430 U.S. at 450.

²⁹² See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8064, para 1 (1998) (“Congress recognized, . . . that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.”).

²⁹³ *Atlas Roofing*, 430 U.S. at 450.

²⁹⁴ Verizon June 22, 2023 Supplemental NAL Response at 2-3 (citing *Tull v. United States*, 481 U.S. 412 (1987) and *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022)). Verizon also cites Justice Thomas’ concurrence in *Axon*. *Id.* (citing *Axon*, 143 S. Ct. at 911 (Thomas, J., concurring)). However, as relevant here, Justice Thomas was critiquing existing Supreme Court precedent insofar as it had allowed agency adjudication subject to only deferential appellate court review. *Axon*, 143 S. Ct. at 906-09 (Thomas, J., concurring). We are not persuaded to alter our analysis based on one Justice’s non-controlling opinion, and we therefore continue to apply existing Supreme Court precedent as it bears on our analysis here.

²⁹⁵ *Tull*, 481 U.S. at 414-15.

²⁹⁶ *Atlas Roofing*, 430 U.S. at 455.

resolution to a forum in which jury trials are unavailable.”²⁹⁷ We thus are unpersuaded by Verizon’s reliance on *Tull* and *Jarkesy*.²⁹⁸

99. *Nondelegation*. Finally, contrary to Verizon’s contention,²⁹⁹ the choice of enforcement processes in section 503(b) of the Act does not constitute an unconstitutional delegation of legislative power. Section 503(b)(3) and (4) of the Act gives the Commission a choice of two procedural paths when pursuing forfeitures: either the NAL-based path most commonly employed by the Commission—which we have used here—or a formal adjudication in accordance with section 554 of the Administrative Procedure Act before the Commission or an administrative law judge.³⁰⁰ Contrary to Verizon’s suggestion, this choice involves the exercise not of legislative power but of executive power. The choice of enforcement process reflected in section 503(b) does not require the Commission to establish general rules governing private conduct of the sort that might implicate potential concerns about unauthorized lawmaking, but instead involves the exercise of enforcement discretion that is a classic executive power.³⁰¹

100. We also are unpersuaded by Verizon’s reliance on the Fifth Circuit decision in *Jarkesy* to support its nondelegation concerns. In addition to questions about the merits of the Fifth Circuit’s approach in that regard,³⁰² even on its own terms, *Jarkesy* involved a scenario where the court found that “Congress offered *no guidance whatsoever*” regarding the statutory decision at issue.³⁰³ That is not the case here, however. Although section 503(b) alone does not expressly provide guidance regarding the choice of enforcement process, section 4(j) of the Act directs as a general matter that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to

²⁹⁷ *Granfinanciera v. Nordberg*, 492 U.S. 33, 52 (1989) (emphasis omitted). We also are unpersuaded by the Fifth Circuit’s decision in *Jarkesy* insofar as it interpreted *Granfinanciera* as establishing an additional prerequisite for a public right—namely, “when Congress passes a statute under its constitutional authority that creates a right so closely integrated with a comprehensive regulatory scheme that the right is appropriate for agency resolution.” *Jarkesy*, 34 F.4th at 453. But *Granfinanciera* involved a dispute between two private parties, rather than an enforcement action commenced by the government. *Granfinanciera*, 492 U.S. at 51. The *Granfinanciera* Court explained that it had previously applied the public-rights doctrine to sustain “administrative factfinding” in cases “where the Government is involved in its sovereign capacity,” but the Court distinguished such cases from “[w]holly private” disputes. *Id.* (citation omitted). It was in the context of private disputes—*i.e.*, “in cases not involving the Federal Government”—where the Court considered whether Congress “has created a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution.” *Granfinanciera*, 492 U.S. at 54. The Fifth Circuit in *Jarkesy* thus took that holding out of context when it applied it to claims where (as here) the government is involved in its sovereign capacity.

²⁹⁸ The government has petitioned for certiorari in the *Jarkesy* case. Petition for a Writ of Certiorari, SEC v. *Jarkesy*, No. 22-859 (filed Mar. 8, 2023).

²⁹⁹ Verizon June 22, 2023 Supplemental NAL Response at 2-3.

³⁰⁰ 47 U.S.C. § 503(b)(3), (4).

³⁰¹ See, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) (“[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch.”); cf. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (noting that a federal prosecutor’s decision not to indict a particular defendant “has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to ‘take Care that the Laws be faithfully executed’”) (citation omitted); *United States v. Batchelder*, 442 U.S. 114, 121, 124, 126 (1979) (no violation of the nondelegation doctrine when Congress enacted two criminal statutes with “different penalties for essentially the same conduct” and gave prosecutors “discretion to choose between” the two statutes given that Congress had “informed the courts, prosecutors, and defendants of the permissible punishment alternatives available under each [statute],” and thereby “fulfilled its duty”).

³⁰² As discussed above, Supreme Court precedent supports our contrary analysis here, and as previously noted, the government has petitioned for certiorari in the *Jarkesy* case. See *supra* note 298.

³⁰³ *Jarkesy*, 34 F.4th at 462.

the ends of justice.”³⁰⁴ Nothing in section 503(b) precludes the applicability of these considerations to guide the Commission’s choice of enforcement process there, and the Commission has interpreted section 4(j) as informing its decision regarding the procedural protections required in adjudicatory proceedings in other contexts in the past.³⁰⁵ The circumstances here therefore are distinct from those in *Jarkesy* where “Congress offered *no guidance* whatsoever.”³⁰⁶

IV. CONCLUSION

101. Based on the record before us and in light of the applicable statutory factors, we conclude that Verizon willfully and repeatedly violated section 222 of the Act³⁰⁷ as well as section 64.2010 of the Commission’s rules³⁰⁸ by disclosing its customers’ location information, without their consent, to a third party who was not authorized to receive it and for failing to take reasonable steps to protect its customers’ location information. We decline to withdraw the Admonishment and, having already reduced the forfeiture by \$1,417,500 to account for two entities that did not participate in Verizon’s LBS program, decline to further reduce or to cancel the forfeiture amount of \$46,901,250.

V. ORDERING CLAUSES

102. 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, Verizon Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of forty-six million, nine-hundred and one thousand, two hundred and fifty dollars (\$46,901,250) for willfully and repeatedly violating section 222 of the Act and section 64.2010 of the Commission’s rules.

103. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days after the release of this Forfeiture Order.³⁰⁹ Verizon Communications shall send electronic notification of payment to Shana Yates, Michael Epshteyn, and Kimbarly Taylor, Enforcement Bureau, Federal Communications Commission, at shana.yates@fcc.gov, michael.epshteyn@fcc.gov, and kimbarly.taylor@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.³¹⁰

104. In order for Verizon Communications to pay the proposed forfeiture, Verizon Communications shall notify Shana Yates at Shana.Yates@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>. 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

³⁰⁴ 47 U.S.C. § 154(j).

³⁰⁵ See, e.g., *Procedural Streamlining of Administrative Hearings*, EB Docket No. 19-214, Report and Order, 35 FCC Red 10729, 10734, para. 14 (2020) (looking to the standards in section 4(j) to guide the decision regarding the conduct of adjudicatory proceedings on the basis of a written record without live testimony); *id.* at 10735-36, para. 18 (looking to the standards in section 4(j) to guide the decision regarding whether an adjudication should be heard by the Commission, one or more commissioners, or an ALJ).

³⁰⁶ *Jarkesy*, 34 F.4th at 462.

³⁰⁷ 47 U.S.C. § 222.

³⁰⁸ 47 CFR § 64.2010.

³⁰⁹ *Id.*

³¹⁰ 47 U.S.C. § 504(a).

by check or money order. Below are instructions that payors should follow based on the form of payment selected:³¹¹

- 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 159³¹² or printed CORES form³¹³ 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).³¹⁴ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

³¹¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

³¹² FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³¹³ 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>.

³¹⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

106. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to David L. Haga, Associate General Counsel, Verizon Communications, c/o Scott H. Angstreich, Esq., and Christopher M. Young, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Verizon Communications*, Forfeiture Order, File No.: EB-TCD-18-00027698
(April 17, 2024)

Our smartphones are always with us, and as a result these devices know where we are at any given moment. This geolocation data is especially sensitive. It is a reflection of who we are and where we go. In the wrong hands, it can provide those who wish to do us harm the ability to locate us with pinpoint accuracy. That is exactly what happened when news reports revealed that the largest wireless carriers in the country were selling our real-time location information to data aggregators, allowing this highly sensitive data to wind up in the hands of bail-bond companies, bounty hunters, and other shady actors. This ugly practice violates the law—specifically Section 222 of the Communications Act, which protects the privacy of consumer data. The Commission has long recognized the importance of ensuring that information about who we call and where we go is not for sale. In fact, these enforcement actions—leading to \$200 million in fines—were first proposed by the last Administration. By following through with this order, we once again make clear that wireless carriers have a duty to keep our geolocation information private and secure.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Verizon Communications*, Forfeiture Order, File No.: EB-TCD-18-00027698
(April 17, 2024)

For more than a decade, location-based service (LBS) providers have offered valuable services to consumers, like emergency medical response and roadside assistance. Up until the initiation of the above-captioned enforcement actions, LBS providers did so by obtaining access to certain location information from mobile wireless carriers like AT&T, Verizon, and T-Mobile. Then, in 2018, a news report revealed that a local sheriff had misused access to an LBS provider's services. That sheriff was rightly prosecuted for his unlawful actions and served jail time. Subsequently, all of the participating carriers ended their LBS programs. So our decision today does not address any ongoing practice.

This is not to say that LBS providers have ended their operations. They have simply shifted to obtaining this same type of location information from other types of entities. That is why I encouraged my FCC colleagues to examine ways that we could use these proceedings to address that ongoing practice. But my view did not prevail.

That brings us to the final Forfeiture Orders that the FCC approves today. Back in 2020, after the mobile wireless carriers exited the LBS line of business, the FCC unanimously voted to approve Notices of Apparent Liability (NALs) against the carriers. Even then, it was clear that at least one LBS provider had acted improperly. So I voted for the NALs so we could investigate the facts and determine whether or not the carriers had violated any provisions of the Communications Act.

Now that the investigations are complete, I cannot support today's Orders. This is not to say that the carriers' past conduct should escape scrutiny by a federal agency. Rather, given the nature of the services at issue, the Federal Trade Commission, not the FCC, would have been the right entity to take a final enforcement action, to the extent the FTC determined that one was warranted.

Here's why. Unlike the FTC, Congress has provided the FCC with both limited and circumscribed authority over privacy. Congress delineated the narrow contours of our authority in section 222 of the Communications Act. The services at issue in these cases plainly fall outside the scope of the FCC's section 222 authority. Indeed, today's FCC Orders rest on a newfound definition of customer proprietary network information (CPNI) that finds no support in the Communications Act or FCC precedent. And without providing advance notice of the new legal duties expected of carriers (to the extent we could adopt those new duties at all), the FCC retroactively announces eye-popping forfeitures totaling nearly \$200,000,000. These actions are inconsistent with the law and basic fairness. The FCC has reached beyond its authority in these cases.

According to the Orders, our CPNI rules now apply whenever a carrier handles a customer's location information—whether or not it relates to the customer's use of a “telecommunications service” under Title II of the Communications Act. Here, the location information was unrelated to a Title II service. The customer did not need to make a call to convey his or her location. In fact, the carrier could have obtained the customer's location even if the customer had a data-only plan for tablets. Yet the Order concludes that the carriers mishandled CPNI.

That cannot be right. Start with the definition of CPNI, which section 222 of the Communications Act defines as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a

telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.¹

That definition has two key limitations. First, the information must be of a specific type. As relevant here, CPNI must “relate to” the “location ... of use of a telecommunications service.” Second, the information must have been obtained in a specific way. The customer must have made his or her location “available to carrier” and “solely by virtue of the carrier-customer relationship.”

Take the first limitation. By requiring that the location “relate” to the “use of a telecommunications service,” the statute covers a particular type of data known as “call location information”—namely, the customer’s location *while making or receiving a voice call*. Section 222 confirms this commonsense reading elsewhere when it expressly refers to “call location information.”² These statutory references to “call location information” would make no sense if Congress intended for CPNI to cover all location information collected by a carrier, irrespective of particular calls.

The FCC confirmed that “straightforward” interpretation in a 2013 Declaratory Ruling.³ The definition of CPNI, this agency held, encompassed “telephone numbers of calls dialed and received and the location of the device at the time of the calls.”⁴ The FCC also clarified that CPNI included “the location, date, and time a handset experiences a network event, such as a dialed or received telephone call [or] a dropped call.”⁵

Although the Orders claim CPNI was at play, they do not contend that “call location information” was disclosed. Nor could they. As the Orders concede, the carriers obtained their customers’ location whenever a customer’s device pinged the carrier’s cell site, even when the device was otherwise idle. No voice call was necessary for the carrier to obtain the customer’s location. In fact, the carrier could gather the customer’s location even if the customer did not have a voice plan. So, the “location” did not “relate to” the “use” of a “telecommunications service” in any meaningful sense.

Turning to the second limitation, it seems implausible to conclude that the carrier obtained the customer’s location “*solely* by virtue of the carrier-customer relationship,” as section 222 requires. True, many of these customers might have had voice plans, thereby creating a “carrier-customer relationship.” But any Title II relationship was, at most, coincidental. The carrier could have obtained the customer’s location even in the absence of a call, and even in the absence of a voice plan.

The massive forfeitures imposed in these Orders offend basic principles of fair notice. The FCC has never held that location information other than “call location information” constitutes CPNI. Nor has the FCC stated that a carrier might be liable under our CPNI rules for location information unrelated to a Title II service and collected outside the Title II relationship. So, even if we could proscribe the conduct at issue here through a rulemaking (and I am dubious that we could), it would be inappropriate and unlawful to impose the retroactive liability that these Orders do.

¹ 47 U.S.C. § 222(h)(1)(A).

² 47 U.S.C. § 222(f)(1) (ordinarily requiring “express prior authorization of the customer” for carrier disclosure of “call location information”); 47 U.S.C. § 222(d)(4) (allowing, however, carrier disclosure of “call location information” in certain emergency situations).

³ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Rcd 9609, para. 22 (2013).

⁴ *Id.* at para. 22.

⁵ *Id.* at para. 25.

In the end, these matters should have been handled by the FTC. Our CPNI rules are narrow and do not cover every piece of data collected by an FCC-regulated entity. Besides, as the Communications Act makes clear, carriers are regulated under Title II only when they are engaged in offering Title II services.⁶ In situations where an FCC-regulated entity offers a Title I service, such as mobile broadband, the FTC is the proper agency to enforce privacy and data security practices under generally applicable rules of the road. I respectfully dissent.

⁶ 47 U.S.C. § 153(51) (“A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services ...”); *see also* *FTC v. AT&T Mobility LLC*, 883 F. 3d 848, 863-64 (9th Cir. 2018) (holding that the FTC’s “common carrier” exemption to Section 5 of the FTC Act “bars the FTC from regulating ‘common carriers’ only to the extent that they engage in common-carriage activity”).

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Verizon Communications*, Forfeiture Order, File No.: EB-TCD-18-00027698
(April 17, 2024)

Today, each of the major national mobile network operators faces a forfeiture for its purported failure to secure the confidentiality of its customer proprietary network information ('CPNI') as it relates to location information of network user devices. While the facts of each alleged violation are somewhat different, the enforcement calculation methodology used to arrive at the forfeitures is shared. Because I am concerned principally with that issue, together with what I view as a significant and undesirable policy upshot common across the actions that the Commission takes today, I will draft one dissent.

There is no valid basis for the arbitrary and capricious finding—enunciating in the Commission's erroneous rationale in *TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014) (*'TerraCom'*) and relied upon today—that a single, systemic failure to follow the Commission's rules (in that case, violations of sections 201(b) and 222(a) of the Act; here, a violation of section 64.2010 of the Rules) may constitute however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology. In *TerraCom*—which was resolved by consent decree and never proceeded to a forfeiture order—the Commission found that each customer record exposed by a single insecure data protection method (some 305,065 records) could be treated as having formed a separate and continuing violation. Here, the Commission purports to count individual location-based services providers ('LBS') and aggregators relied upon by each mobile network operator to arrive at its separate and distinct continuing violations.

Whether counting individual exposed customer records or LBS providers and aggregators, the clear effect of the Commission's arbitrary selection of a violation class used to increase the number violations emerging from a single act or failure to act of a regulatee alleged to be in violation of our rules is to exceed our section 503 statutory authority. Here it cannot credibly be argued that any of the mobile network operators, in operating an LBS/aggregator program, committed more than one act relevant for the purposes of forfeiture calculation. It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an "act" into its individual constituent parts, counting the members of whatever class of objects may be related to the alleged violation to arrive at whatever forfeiture amount suits a preordained outcome. In this case we exceed our statutory maximum forfeiture by a factor of, in some cases, dozens; in *TerraCom*, we asserted the right to exceed it by thousands.

What's more, the Commission ought to act prudentially here: even assuming, purely *arguendo*, that location-based CPNI were illicitly exposed, let us not forget that, at every moment, any of thousands of unregulated apps may pull GPS location information, Wi-Fi and Bluetooth signal strength, and other fragments of data indicating location from customer handsets at every moment the device is on. Indeed, this can be, and routinely is, accomplished even without consumer permission. By sending a strong market signal that any alleged violation of Commission rules regarding CPNI safekeeping (whether or not the rules actually were violated) can and will result in an outsize fine, we have effectively choked off one of the only ways that valid and legal users of consent-based location data services had to access location data for which legal safeguards and oversight actually exist.

It was available for the Commission to work with the carriers to issue consent decrees to promote best practices to develop further safeguards around location-based and aggregation services, and to actively monitor ongoing compliance in an effort to vouchsafe a regulated means of consensually sharing handset location data with legitimate users of the same. We opt, instead, to appear "tough on crime" in a way that actually reduces consumer data privacy by pushing legitimate users of location data toward unregulated data brokerage. Accordingly, I dissent.

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

In the Matter of	)	
	)	
Sprint Corporation	)	File No.: EB-TCD-18-00027700
	)	NAL/Acct. No.: 202032170005
	)	FRN: 0003774593

FORFEITURE ORDER

Adopted: April 17, 2024

Released: April 29, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
A. Legal Background	2
B. Factual Background	8
III. DISCUSSION	22
A. Location Information is CPNI	23
B. Sprint Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act	34
C. Sprint Failed to Take Reasonable Steps to Protect CPNI	41
1. Sprint's Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222	42
2. Sprint's Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures	46
3. Sprint Bore the Burden of Production	55
D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent	62
1. The Commission Reasonably Found that Sprint Engaged in 11 Continuing Violations	64
2. The Upward Adjustment is Permissible and Warranted	70
E. Section 503(b) Is Employed Here Consistent With the Constitution	73
IV. CONCLUSION	85
V. ORDERING CLAUSES	86

I. INTRODUCTION

1. On February 28, 2020, the Commission issued a Notice of Apparent Liability for Forfeiture and Admonishment (*NAL*)¹ against Sprint Corporation (Sprint or Company).² In the *NAL*, the

¹ *Sprint Corporation*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1655 (2020) (*NAL*).

² On April 1, 2020, a merger between Sprint Corporation and T-Mobile US, Inc. (T-Mobile), closed. As a result, Sprint became a wholly owned subsidiary of T-Mobile, with the combined companies operating under the name of T-Mobile. Prior to the merger, the Commission issued notices of apparent liability against the then-separate companies of Sprint and T-Mobile in relation to each company's respective location-based service programs. In order to avoid confusion, and as this Forfeiture Order resolves the *NAL* for the actions of Sprint pre-merger, we will continue to refer to Sprint in this Order to avoid confusion.

Commission admonished Sprint for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it, and proposed to fine Sprint \$12,240,000 for failing to take reasonable steps to protect its customers' location information. After reviewing the Company's response to the *NAL*,³ we find no reason to cancel, withdraw, or reduce the proposed penalty, and impose a penalty of \$12,240,000 against Sprint.⁴

II. BACKGROUND

A. Legal Background

2. As set forth fully in the *NAL*,⁵ carriers are required to protect the confidentiality of certain customer data related to the provision of telecommunications service. This includes location information, which is customer proprietary network information (CPNI) pursuant to section 222 of the Communications Act (Act).⁶ The Commission has advised carriers that this duty requires them to take "every reasonable precaution" to safeguard their customers' information.⁷ Section 222(a) of the Act imposes a general duty on telecommunications carriers to "protect the confidentiality of proprietary information" of "customers."⁸ Section 222(c) establishes specific privacy requirements for "customer proprietary network information" or CPNI, namely information relating to the "quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" and that is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁹ The Commission has promulgated regulations implementing section 222 (CPNI Rules), which require, among other things, that carriers employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."¹⁰

³ *Sprint Corporation*, Response to Notice of Apparent Liability for Forfeiture and Admonishment (filed May 7, 2020) (on file in EB-TCO-18-00027700) (*NAL Response* or *Response*).

⁴ Prior to the T-Mobile/Sprint merger, the two companies filed applications seeking, among other things, "Commission consent to the transfer of control of the licenses, authorizations, and spectrum leases" from Sprint to T-Mobile. *Applications of T-Mobile US, Inc., and Sprint Corporation, et al., Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10580, para. 1 (2019) (*T-Mobile Sprint Order*). We note that the *T-Mobile Sprint Order* stated that Commission's "grant of the Applications is without prejudice to any enforcement actions the Commission . . . may deem appropriate in light of any facts uncovered in any investigations of possible violations of law." *T-Mobile Sprint Order*, 34 FCC Rcd at 10598, para. 46. The Commission explicitly conditioned the grant of the Applications "on New T-Mobile (however structured, whether through merger, consolidation, or otherwise), and its successors, assigns, and transferees, assuming liability for any forfeitures or restitutions that may be imposed by the Commission on Sprint Corporation and its subsidiaries . . ." *Id.* Therefore T-Mobile is liable for the penalty imposed in this Order.

⁵ See generally *NAL*.

⁶ 47 U.S.C. § 222.

⁷ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959, para. 64 (2007) (*2007 CPNI Order*).

⁸ 47 U.S.C. § 222(a).

⁹ 47 U.S.C. § 222(c), (h)(1)(A) (emphasis added). "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). The mobile voice services provided by Sprint are "telecommunications services." See 47 U.S.C. § 332(c)(1); H.R. Conf. Rep. No. 104-458 at 125 (1996) ("This definition [of 'telecommunications service'] is intended to include commercial mobile service.").

¹⁰ See 47 CFR § 64.2001 *et seq.*; *id.* § 64.2010(a). The CPNI Rules are a subset of, and are thus included within, the Commission's rules.

3. *Customer Consent to Disclose CPNI.* With limited exceptions, a carrier may only use, disclose, or permit access to CPNI with customer approval.¹¹ Generally, carriers must obtain a customer's "opt-in approval" before disclosing that customer's CPNI.¹² This means that a carrier must obtain the customer's "affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request"¹³

4. This opt-in requirement has been in place since 2007, when the Commission amended its rules in the *2007 CPNI Order* after finding that once carriers disclosed CPNI to third parties, including joint venturers and independent contractors, that information was out of the control of the carrier and had a higher risk of being improperly disclosed.¹⁴ Accordingly, among other things, this opt-in requirement was meant to allow individual consumers to determine if they wanted to bear the increased risk associated with sharing CPNI with such third parties.¹⁵ In the Commission's view, obtaining a customer's express consent in these circumstances is particularly important, because a carrier cannot simply rectify the harms resulting from a breach by terminating its agreement with such a third party, "nor can the Commission completely alleviate a customer's concerns about the privacy invasion through an enforcement proceeding."¹⁶ The Commission further concluded that contractual safeguards between a carrier and such a third party do not obviate the need for explicit customer consent, as such safeguards do not eliminate the increased risk of unauthorized CPNI disclosures that accompany information that is provided by a carrier to such a third party.¹⁷ Thus, the Commission determined that, with limited exceptions, a carrier may only use, disclose, or permit access to CPNI with the customer's opt-in approval.¹⁸

5. *Reasonable Measures to Safeguard CPNI.* The Commission has also recognized that an opt-in requirement alone is not enough to protect customer CPNI, especially in light of tactics like "pretexting," where a party pretends to be a particular customer or other authorized person in order to illegally obtain access to that customer's information (thus circumventing opt-in requirements).¹⁹ Therefore, the Commission adopted rules requiring carriers to "take reasonable measures to *discover* and *protect* against attempts to gain unauthorized access to CPNI."²⁰ To provide some direction on how carriers should protect against tactics like pretexting, the Commission included in its amended rules customer authentication requirements tailored to whether a customer is seeking in-person, online, or over-the-phone access to CPNI.²¹ It also adopted password and account notification requirements.²²

¹¹ 47 U.S.C. § 222(c)(1) ("Except as required by law *or with the approval of the customer*, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.") (emphasis added).

¹² 47 CFR § 64.2007(b).

¹³ 47 CFR § 64.2003(k).

¹⁴ *2007 CPNI Order*, 22 FCC Rcd at 6947-53, paras. 37-49. Prior to the *2007 CPNI Order* the Commission's rules had allowed carriers to share CPNI with joint venture partners and independent contractors on an opt-out basis for the purpose of marketing communications-related services to customers. *Id.* at 6931-32, para. 8.

¹⁵ *2007 CPNI Order*, 22 FCC Rcd at 6950, para. 45.

¹⁶ *2007 CPNI Order*, 22 FCC Rcd at 6949, para. 42.

¹⁷ *2007 CPNI Order*, 22 FCC Rcd at 6952, para. 49.

¹⁸ *See* 47 CFR § 64.2007(b).

¹⁹ *See 2007 CPNI Order*, 22 FCC Rcd at 6928, para. 1 & n.1.

²⁰ 47 CFR § 64.2010(a) (emphasis added).

²¹ *See* 47 CFR § 64.2010(b)-(d).

²² *See* 47 CFR § 64.2010(e)-(f).

6. The Commission made clear that the specific customer authentication requirements it adopted were “minimum standards” and emphasized the Commission’s commitment “to taking resolute enforcement action to ensure that the goals of section 222 [were] achieved.”²³ Although carriers are not expected to eliminate every vulnerability to the security of CPNI, they must employ “reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.”²⁴ They must also take reasonable measures to protect the confidentiality of CPNI—a permanent and ongoing obligation to police disclosures and ensure proper functioning of security measures.²⁵ As the Commission stated in the *NAL*, several government entities provide guidance and publish best practices that are intended to help companies evaluate the strength of their information security measures.²⁶

7. *Section 217.* Finally, the Act makes clear that carriers cannot disclaim their statutory obligations to protect their customers’ CPNI by delegating such obligations to third parties. Section 217 of the Act provides that “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”²⁷

B. Factual Background

8. *Customer Location Information and Sprint’s Location-Based Services Business Model.* Sprint (now T-Mobile)²⁸ provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on T-Mobile’s wireless network.²⁹ As part of its pre-merger business, Sprint ran a Location-Based Services (LBS) program until May 31, 2019. Through the LBS program, Sprint sold access to its customers’ location information to companies known as “location information aggregators,” who then resold access to such information to third-party location-based service providers or in some cases to “sub-aggregators” or intermediary

²³ 2007 CPNI Order, 22 FCC Rcd at 6959–60, para. 65.

²⁴ 47 CFR § 64.2010(a).

²⁵ See 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64 (“We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.”).

²⁶ For example, the National Institute of Standards and Technology (NIST) is responsible for developing information security standards and guidelines, including minimum requirements for federal information systems. NIST publishes cybersecurity and privacy frameworks which feature instructive practices and guidelines for organizations to reference. The publications can be useful in determining whether particular cybersecurity or privacy practices are reasonable by comparison. The model practices identified in the NIST and other frameworks, however, are not legally binding rules, and we do not consider them as such here. The Federal Trade Commission (FTC), the FCC’s Communications Security, Reliability, and Interoperability Council (CSRIC), and the Cybersecurity & Infrastructure Security Agency (CISA) also offer guidance related to managing data security risks. See NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1 (Apr. 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (NIST Cybersecurity Framework); NIST, The NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0 (Jan. 16, 2020), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf>; FTC, Start with Security: A Guide for Business, Lessons Learned from FTC Cases (June 2015), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>; Communications Security, Reliability and Interoperability Council, CSRIC Best Practices, <https://opendata.fcc.gov/Public-Safety/CSRIC-Best-Practices/qb45-rw2t/data>; CISA, Cross-Sector Cybersecurity Performance Goals and Objectives (last visited Aug. 17, 2022), <https://www.cisa.gov/cpgs>.

²⁷ 47 U.S.C. § 217.

²⁸ As explained in notes 2 and 4, *supra*, the merger of Sprint and T-Mobile closed on April 1, 2020. That merger was approved by the Commission 2019. See *T-Mobile Sprint Order*, 34 FCC Rcd 10578. As a result, Sprint is a wholly owned subsidiary of T-Mobile, and operates under the name of T-Mobile.

²⁹ See T-Mobile US, Inc., 2021 Annual Report, https://s29.q4cdn.com/310188824/files/doc_financials/2021/ar/TMUS-2021-Annual-Report.pdf (Sprint merged with T-Mobile USA, Inc., on April 1, 2020, after the *NAL* in this matter was issued).

companies who then resold access to such information to location-based service providers.³⁰ Sprint had arrangements with two location information aggregators: LocationSmart and Zumigo (the Aggregators). Each Aggregator, in turn, had arrangements with location-based service providers. In total, Sprint sold access to its customers' location information (directly or indirectly) to 86 third-party entities (including the two Aggregators).³¹

9. The Sprint LBS program was largely governed via contractual provisions that vested Sprint with oversight authority over the Aggregators. The Aggregators then entered into their own contracts with various LBS providers, sub-aggregators, and third-party developers.³² As explained in the *NAL*, "Sprint did not contract directly with the third-party developers but instead delegated all responsibility to the Aggregators to ensure that the sub-aggregators and application developers complied with 'the Aggregator and Third Party Developer obligations' contained in Sprint's contracts with the Aggregators."³³ According to Sprint, the Company "required customer consent to access or share its customer location information" and "application developers and the Aggregators were 'contractually obligated to incorporate conspicuous and stand-alone notice . . . that explains how location information will be accessed, used, stored, disclosed or collected' and that the end user had to 'expressly and affirmatively accept the notice before continuing.'"³⁴ This arrangement meant Sprint itself did not notify customers and collect affirmative customer consent for the disclosure of customer location information. Sprint asserts that its LBS program was subject to a number of safeguards. This included the contractual obligation "to provide the notice record to Sprint before Sprint provided location information to the Aggregator," as well as a requirement that "the Aggregators and developers . . . document the presentation of notice and receipt of consent in each instance and . . . make those records available to Sprint upon request."³⁵

10. Sprint's contracts obligated the Aggregators to ensure that the LBS service providers "complied with Sprint's privacy policy and consumer protection, marketing, data security laws and regulations in addition to the CTIA Guidelines."³⁶ The contracts also established a "Certification" process that "required the Aggregators to test the sub-aggregators and location-based service providers' applications to ensure they met Sprint's notice, privacy, and data security requirements."³⁷ The contracts between Sprint and the Aggregators also required that the Aggregators "'obtain prior written consent from Sprint 60 days before the use of any [s]ub-[a]ggregator' and gave Sprint sole discretion 'to approve or

³⁰ The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *NAL*, 35 FCC Rcd at 1660-68, paras. 11-31.

³¹ See *NAL*, 35 FCC Rcd at 1661-62, paras. 12-13 (citations omitted).

³² See *NAL*, 35 FCC Rcd at 1662, para. 15 (citing Response to Letter of Inquiry from Sprint Corp. to Kristi Thompson, Chief, Telecommunications Consumer Division, FCC Enforcement Bureau, at RD03-000096, Response to Request for Documents No. 3 at Section 2, Sprint LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 2, Sprint Zumigo Agreement (Oct. 16, 2018) (on file in EB-TCD-18-00027700) (LOI Response)).

³³ *NAL*, 35 FCC Rcd at 1663, para. 16 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 2.2-2.3, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 2.2-2.3, Sprint-Zumigo Agreement).

³⁴ *NAL*, 35 FCC Rcd at 1662, para. 15 (quoting LOI Response at 1, Response to Question 1).

³⁵ *NAL*, 35 FCC Rcd at 1662-63, para. 15 (citing LOI Response at 6, Response to Question 5).

³⁶ *NAL*, 35 FCC Rcd at 1663, para. 16 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 22.11, Sprint LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 22.11, Sprint Zumigo Agreement).

³⁷ *NAL*, 35 FCC Rcd at 1663, para. 17 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 12, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 12, Sprint-Zumigo Agreement).

reject each [s]ub-aggregator.”³⁸ The contracts contain no such provision with respect to Aggregators’ use of third-party developers.

11. Sprint had broad authority under its contracts with the Aggregators to quickly terminate access to customer location information. Sprint could immediately terminate its contract with either Aggregator under a variety of circumstances, including if the Aggregator:

- (1) [F]ailed to impose required obligations on its location-based service provider clients; (2) failed to comply with the contract terms specifying non-disclosure of sensitive information (such as the location information at issue here); (3) failed to “employ administrative, physical, and technical safeguards . . . that prevent the unauthorized collection, access, disclosure, and use” of information provided by Sprint; (4) failed to ensure that the Aggregator’s location-based service provider clients complied with Sprint’s customer notice requirements; or (5) negligently or knowingly misrepresented the location-based service provider’s service or application.³⁹

Sprint also had the right to immediately suspend or terminate an Aggregator’s access to customer location information for reasons that included a breach of the Aggregator’s contractual obligations.⁴⁰ Likewise, Sprint could “immediately suspend the transmission of location information by the Aggregator to any sub-aggregator or location-based service provider that Sprint believed was not complying with the obligations that the Aggregators were directed to impose upon them.”⁴¹ In addition, Sprint had the right to terminate its contracts with the Aggregators for any reason “upon 90 days written notice.”⁴²

12. Sprint also had the authority to conduct audits and other internal reviews of the LBS program. Sprint “maintained the right to assess compliance with the terms of agreements with Aggregators, and could seek ‘reports, full and complete access to relevant facilities, books, records, procedures, and information.’”⁴³ Sprint also had the right to audit the performance of the Aggregators once every 12 months,⁴⁴ and “had the right to perform audits at any time as necessary if it had a good faith reason to believe a breach of privacy and security obligations had occurred.”⁴⁵ However, there is no evidence that Sprint exercised any of these contractual provisions before 2018.⁴⁶ While Sprint claims that

³⁸ *NAL*, 35 FCC Rcd at 1663, para. 17 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 2.2, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 2.2, Sprint-Zumigo Agreement).

³⁹ *NAL*, 35 FCC Rcd at 1663, para. 18 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 21, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response Request for Documents No. 3 at Section 21, Sprint-Zumigo Agreement).

⁴⁰ *NAL*, 35 FCC Rcd at 1663-64, para. 18 (citing LOI Response at 7, Response to Question 5).

⁴¹ *NAL*, 35 FCC Rcd at 1664, para. 18 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 14, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 14, Sprint-Zumigo Agreement).

⁴² *NAL*, 35 FCC Rcd at 1663, para. 18 (citing LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 2.2, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 2.2, Sprint-Zumigo Agreement).

⁴³ *NAL*, 35 FCC Rcd at 1664, para. 19 (quoting LOI Response at 7, Response to Question 5; LOI Response at RD03-000096, Response to Request for Documents No. 3 at Section 22.7, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 22.7, Sprint-Zumigo Agreement).

⁴⁴ See *NAL*, 35 FCC Rcd at 1664, para. 19 (citing Supplemental LOI Response at 6, Response to Question 5; LOI at RD03-000096, Response to Request for Documents No. 3 at Section 29.7, Sprint-LocationSmart Agreement; LOI at RD03-000134, Response to Request for Documents No. 3 at Section 29.7, Sprint-Zumigo Agreement).

⁴⁵ *NAL*, 35 FCC Rcd at 1664, para. 19 (citing Supplemental LOI Response at 6-7, Response to Question 5).

⁴⁶ See *NAL*, 35 FCC Rcd at 1664, para. 19.

it “conducted a legal review of both LocationSmart and Zumigo in 2018,” it declined to specify the time period of such review, or to provide any information at all about the reviews, citing privilege.⁴⁷

13. *Unauthorized Access and Use of Customer Location Information.* On May 10, 2018, the *New York Times* published an article that detailed security breaches involving Sprint’s (and other carriers’) practice of selling access to customer location information.⁴⁸ The *NAL* includes a more detailed summary of the article and its findings, but essentially the breaches involved a location-based service provider (Securus Technologies, Inc., or Securus) that offered a location-finding service to law enforcement and corrections officials that allowed such officials to access customer mobile device location *without* that device owner’s knowledge or consent.⁴⁹ Not only was Securus’s location-finding service outside the scope of both Securus’s stated purpose for accessing Sprint’s customers’ location information and any agreement with either Aggregator (and thus had not been reviewed by either Aggregator or Sprint), but despite Securus’s claims that the program required appropriate “legal authorization,” it did not verify such authorizations and its program was used and abused by a (now former) Missouri Sheriff (Cory Hutcheson) for non-law enforcement purposes and in the absence of any such legal authorization.⁵⁰ Sprint conceded that it was unable to detect Securus’s activities (i.e., location requests unrelated to its stated purpose for accessing location information—which involved an inmate collect-calling service) because of Securus’s misrepresentations to the Aggregator.⁵¹ Further, Sprint does not claim that it had any way of distinguishing valid, customer-authorized requests for location information from invalid, unauthorized requests, such as those from Securus’s unauthorized-location finding service.

14. The Department of Justice’s U.S. Attorney’s Office for the Eastern District of Missouri charged Hutcheson with, among other things, wire fraud and illegally possessing and transferring the means of identification of others, and Hutcheson pleaded guilty on November 20, 2018.⁵² The Department of Justice’s investigation of Hutcheson’s actions, included an examination of how the Securus location-finding service operated. Once Hutcheson became an authorized user of Securus’s LBS software, he was able to obtain the location of specific mobile telephone devices.⁵³ In order to do so, users (including Hutcheson) were required to input the telephone number of the device they wanted to locate, and then “upload a document manually checking a box, the text of which stated, ‘[b]y checking

⁴⁷ See *NAL*, 35 FCC Rcd at 1664, para. 19 (citing LOI Response at 9, Response to Question 11; Supplemental LOI Response at 11, Response to Question 10).

⁴⁸ See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

⁴⁹ See *NAL*, 35 FCC Rcd at 1644-65, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

⁵⁰ See *NAL*, 35 FCC Rcd at 1664-65, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, Riverfront Times (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>).

⁵¹ See *NAL*, 35 FCC Rcd at 1665, para. 22.

⁵² See Press Release, U.S. Attorney’s Office Eastern District of Missouri, *Mississippi County Sheriff Pleads Guilty to Fraud and Identity Theft, Agrees to Resign* (Nov. 20, 2018), <https://www.justice.gov/usao-edmo/pr/mississippi-county-sheriff-pleads-guilty-fraud-and-identity-theft-agrees-resign>.

⁵³ See Government’s Sentencing Memorandum at 3, *United States v. Corey Hutcheson*, Case No. 1:18-CR-00041 JAR, Doc. No. 65 (E.D. Mo. Apr. 23, 2019) (Hutcheson Sentencing Memo), <https://storage.courtlistener.com/recap/gov.uscourts.moed.160663/gov.uscourts.moed.160663.65.0.pdf>; see also *NAL*, 35 FCC Rcd at 1664-65, paras. 20-21.

this box, I hereby certify the attached document is an official document giving permission to look up the location on this phone number requested.”⁵⁴ As soon as Hutcheson (or any other authorized user) submitted his request and uploaded a document, the Securus LBS platform would *immediately* provide the requested location information (regardless of the adequacy of the uploaded document).⁵⁵ Rather than “uploading the required legal process,” Hutcheson instead “routinely uploaded false and fraudulent documents . . . , each time representing that the uploaded documents were valid legal process authorizing the location requests the defendant made.”⁵⁶ Those “false and fraudulent documents” included “his health insurance policy, his auto insurance policy, and pages selected from Sheriff training materials.”⁵⁷ Hutcheson “submitted thousands of Securus LBS requests and obtained the location data of hundreds of individual phone subscribers without valid legal authorization.”⁵⁸

15. *Sprint’s Response to the Securus Disclosures.* Sprint terminated Securus’s access to Sprint customer location information on May 17, 2018, following the *New York Times* article.⁵⁹ On May 25, 2018, Sprint suspended LocationSmart from its LBS program and stopped sharing customer location information with the Aggregator, having confirmed that “data sharing through LocationSmart and 3Cinteractive ‘had occurred for an unknown and unapproved purpose.’”⁶⁰ By suspending LocationSmart, Sprint “effectively terminated access to Sprint wireless customer location information for LocationSmart and the 77 entities that purchased access through LocationSmart.”⁶¹ According to Sprint, it terminated LocationSmart’s contract on June 20, 2018.⁶² Also on June 20, 2018, it provided the 90-day notice of termination to Zumigo, which would result in a termination on September 18, 2018.⁶³

16. At the same time, Sprint was planning on re-launching its LBS program.⁶⁴ As part of this effort in June 2018, Sprint began formalizing certain “Methods & Procedures” to “‘complement’ the contractual protections for future Aggregators and location-based services;” the Methods & Procedures were finalized in August 2018.⁶⁵ According to Sprint, and unlike the Aggregator Contracts, the Methods & Procedures “required Aggregators to submit reports to Sprint that provided detailed information about all companies (including aggregators and sub-aggregators) that used Sprint customer location information,” and that such reports had to include “detailed information about how the Sprint customer location information was or would be used.”⁶⁶ Sprint claims that the Methods & Procedures also “provided expanded internal guidance on what information it could seek in auditing its location-based services partners,” including, among other things “reviewing compliance with notice and consent

⁵⁴ Hutcheson Sentencing Memo at 3; *see also* NAL, 35 FCC Rcd at 1664, para. 20.

⁵⁵ *See* Hutcheson Sentencing Memo at 3-4; *see also* NAL, 35 FCC Rcd at 1664, para. 20.

⁵⁶ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1664-65, para. 21.

⁵⁷ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1664-65, para. 21.

⁵⁸ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1664-65, para. 21.

⁵⁹ *See* NAL, 35 FCC Rcd at 1665, para. 23.

⁶⁰ NAL, 35 FCC Rcd at 1665, para. 24 (quoting LOI Response at 7, Response to Question 6).

⁶¹ NAL, 35 FCC Rcd at 1665-66, para. 24.

⁶² *See* NAL, 35 FCC Rcd at 1666, para. 25 (citing Letter from Sean Olsen, Manager, Contract Administration, Sprint Corp., to Mario Proietti, CEO, Masoud Motamedi, President, TechnoCom Corporation/Locaid d/b/a LocationSmart (June 20, 2018) (on file in EB-TCD-18-00027700)).

⁶³ *See* NAL, 35 FCC Rcd at 1666, para. 25 (citing LOI Response at RD03-000180, Response to Request for Documents No. 3).

⁶⁴ The NAL offers a more complete discussion of Sprint’s plans, and is incorporated by reference. *See* NAL, 35 FCC Rcd at 1666, paras. 26-28.

⁶⁵ NAL, 35 FCC Rcd at 1666, para. 26 (LOI Response at 7, Response to Question 6).

⁶⁶ NAL, 35 FCC Rcd at 1666, para. 26 (citing Supplemental LOI Response at 6, Response to Question 4).

requirements” and “reviewing the Aggregator’s process for validating companies receiving location data.”⁶⁷ Sprint asserts that the new obligations on the Aggregators “included a requirement for an independent third-party audit of the Location Aggregators on their privacy and data security practices,”⁶⁸ but Sprint “does not explain how, or whether, the Methods & Procedures auditing and review process differed from the audits that Sprint had the right to conduct under the original contracts.”⁶⁹

17. On or around August 23, 2018, Sprint re-launched its aggregator LBS program. In August 2018, it executed two new agreements with LocationSmart to permit that Aggregator to access Sprint customer location information and provide it to two LBS providers; the agreements “allowed LocationSmart to obtain Sprint customer location information for 90 days, with monthly renewal up to one year.”⁷⁰ On September 18, 2018, Sprint’s contract with Zumigo terminated.⁷¹ However, on October 16, 2018, “Sprint renewed its previously terminated contract with Zumigo in its entirety”—meaning that unlike LocationSmart, “all of Zumigo’s prior location-based service provider clients again had access to Sprint’s customer location information.”⁷²

18. More than seven months after the *New York Times* article revealing the Securus disclosures, Sprint became aware of a similar incident involving the Company’s customers’ location information. In a January 8, 2019, *Motherboard* article, it was reported that access to customer location information was sold and resold, with little or no oversight, within the bail bonds industry, and that this led to consumers being tracked without their knowledge or consent.⁷³ That article focused in part on the activities of a company called MicroBilt; MicroBilt was a customer of the Aggregator Zumigo, and Zumigo received customer location information from Sprint and the other major wireless carriers.⁷⁴ According to Sprint, before the article’s publication, Sprint was entirely unaware that Zumigo was providing LBS services to MicroBilt, as Sprint “was unable to ‘identify any record of Zumigo obtaining Sprint’s prior written consent before using MicroBilt as a sub-aggregator.’”⁷⁵ Sprint does not deny that MicroBilt received Sprint customer location information, and “concedes that it was unable to verify whether Sprint’s own credentialing process had been followed with respect to MicroBilt, and that Sprint had no information about whether MicroBilt complied with Sprint’s notice-and-consent processes.”⁷⁶ Sprint claims that despite its demands for additional information and details about Zumigo’s relationship

⁶⁷ NAL, 35 FCC Rcd at 1666, para. 26 (citing Supplemental LOI Response at 7, Response to Question 4).

⁶⁸ NAL, 35 FCC Rcd at 1666, para. 26 (quoting Supplemental LOI Response at 6-7, Response to Question 4).

⁶⁹ NAL, 35 FCC Rcd at 1666, para. 26.

⁷⁰ NAL, 35 FCC Rcd at 1666-67, para. 27 (citing LOI Response at 3, 8, Response to Questions 1, 6).

⁷¹ See NAL, 35 FCC Rcd at 1667, para. 28 (citing LOI Response at RD03-000180, Response to Request for Documents No. 3).

⁷² NAL, 35 FCC Rcd at 1667, para. 28 (citing LOI Response at RD03-000183, Response to Request for Documents No. 3).

⁷³ See NAL, 35 FCC Rcd at 1667, para. 29 (citing Joseph Cox, *I Gave a Bounty Hunter \$300. Then He Located Our Phone*, *Motherboard* (Jan. 8. 2019), https://motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-MicroBilt-zumigo-tmobile).

⁷⁴ See NAL, 35 FCC Rcd at 1667, para. 29 (citing Joseph Cox, *I Gave a Bounty Hunter \$300. Then He Located Our Phone*, *Motherboard* (Jan. 8. 2019), https://motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-MicroBilt-zumigo-tmobile).

⁷⁵ NAL, 35 FCC Rcd at 1667, para. 30 (quoting Supplemental LOI Response at 2, Response to Question 1).

⁷⁶ NAL, 35 FCC Rcd at 1667, para. 30 (citing Supplemental LOI Response at 2, Response to Question 1).

with MicroBilt, Zumigo did not respond to the Sprint's requests.⁷⁷ Sprint terminated its contract with Zumigo on January 9, 2019.⁷⁸

19. It was not until May 31, 2019, that Sprint's LBS program (and the sharing of Sprint's customers' location information) finally ceased—in other words, 386 days after the *New York Times* reported on the Securus location-finding service, as well as the abuse of that service by Hutcheson.⁷⁹

20. *Notice of Apparent Liability.* On February 28, 2020, the Commission issued the *NAL* proposing a \$12,240,000 fine against Sprint for its apparent willful and repeated violation of section 222 of the Act and section 64.2010 of the Commission's CPNI Rules for failing to have reasonable protections in place to prevent unauthorized access to customer location information. In the *NAL*, the Commission also admonished Sprint for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it.

21. On May 7, 2020, Sprint filed a response to the *NAL*.⁸⁰ Sprint makes a number of arguments as to why the *NAL* should be withdrawn and cancelled. Sprint argues that location information is not CPNI and thus is not subject to the Act and the Commission's CPNI Rules, and that even if it was, the Company did not have fair notice that location information would be classified as CPNI.⁸¹ Sprint also argues that it acted reasonably both pre- and post-publication of the *New York Times* article. The Company claims that the LBS program had reasonable protections in place before the *New York Times* article, and that the Company's response to the article, including its months-long continuation of the LBS program, was likewise reasonable.⁸² Finally, Sprint argues that the forfeiture amount is arbitrary and capricious.⁸³

III. DISCUSSION

22. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁸⁴ section 1.80 of the Commission's rules,⁸⁵ and the Commission's *Forfeiture Policy Statement*.⁸⁶ When we assess forfeitures, section 503(b)(2)(E) requires that the Commission take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁸⁷ We have fully considered Sprint's *NAL* Response, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore affirm the \$12,240,000 forfeiture proposed in the *NAL*.

⁷⁷ See *NAL*, 35 FCC Rcd at 1668, para. 30 (citing Supplemental LOI Response at 9, Response to Question 5).

⁷⁸ See *NAL*, 35 FCC Rcd at 1668, para. 30 (citing Supplemental LOI Response at 3, Response to Question 1).

⁷⁹ See *NAL*, 35 FCC Rcd at 1668, para. 30 (citing Supplemental LOI Response at 11, Response to Question 7).

⁸⁰ See *NAL* Response.

⁸¹ *NAL* Response at 6-14, 22-24.

⁸² *NAL* Response at 14-21.

⁸³ *NAL* Response at 25-29.

⁸⁴ 47 U.S.C. § 503(b).

⁸⁵ 47 CFR § 1.80.

⁸⁶ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁸⁷ 47 U.S.C. § 503(b)(2)(E).

A. Location Information is CPNI

23. As the *NAL* explained in more detail, the customer location information disclosed in Sprint’s LBS program is CPNI under the Act and our rules.⁸⁸ Section 222 defines CPNI as “information that relates to the quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”⁸⁹ The customer location information used in Sprint’s LBS program falls squarely within this definition. Sprint’s arguments to the contrary⁹⁰ are largely reiterations of arguments the Commission considered and found unpersuasive in the *NAL*. Consistent with the analysis of location data found in the *NAL*, we remain persuaded that the location data at issue here constitute CPNI.

24. *First*, the customer location information at issue here relates to the location of a telecommunications service—i.e., Sprint’s commercial mobile service.⁹¹ As fully explained in the *NAL*:

A wireless mobile device undergoes an authentication and attachment process to the carrier’s network, via the closest towers. After a mobile device is authenticated and logically attached to a wireless network, it may be (1) connected (sending/receiving data/voice) or (2) idle. In either state, the carrier must be aware of and use the device’s location in order for it to enable customers to send and receive calls. Sprint is therefore providing telecommunications service to these customers whenever it is enabling the customer’s device to send and receive calls—regardless of whether the device is actively in use for a call.⁹²

25. We conclude that the location information at issue here meets the first prong of the CPNI definition under either of two alternative interpretations. For one, we believe that the relevant statutory language is best read as referring to “information that relates to the . . . location, . . . of a telecommunications service”⁹³ That interpretation accords with the “rule of the last antecedent,” which suggests that the term “of use” in section 222(h)(1)(A) modifies only “amount,” as opposed to the preceding terms such as “location.”⁹⁴ Our interpretation also better squares with the broader operation of section 222. If the language “of use” modified every term in the preceding list, it would lead to apparently anomalous results. For instance, although the phrase “amount of use of a telecommunications service” plainly refers at least to the number and length of telephone calls, it is not clear what “technical configuration of use” would mean.⁹⁵ And our interpretation squares more readily with section 222(d)(1),

⁸⁸ See *NAL*, 35 FCC Rcd at 1669-71, paras. 35-45.

⁸⁹ 47 U.S.C. § 222(h)(1)(A) (emphasis added).

⁹⁰ See *NAL* Response at 6-14.

⁹¹ See 47 U.S.C. § 332(c)(1) (providing that “a person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter”), (d)(1) (defining “commercial mobile service”).

⁹² *NAL*, 35 FCC Rcd at 1669, para. 37.

⁹³ 47 U.S.C. § 222(h)(1)(A).

⁹⁴ See, e.g., *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (the rule of the last antecedent “provides that ‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows’”).

⁹⁵ We are unpersuaded by Sprint’s claim that interpreting “of use” to modify only “amount” would lead to anomalies because “information relating to the ‘quantity, technical configuration, [or] type . . . of a telecommunications service’ . . . would relate to the network itself, not the information of individual customers.” *NAL* Response at 12 (emphasis omitted). Even if the information relates in part to the network, it also relates to an individual customer by identifying characteristics of the telecommunications service subscribed to by that customer. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of

(continued....)

which preserves carriers' ability to use CPNI to "initiate" service⁹⁶—an event that, aspects of which, ordinarily occur before the service is in "use."

26. The location information at issue here readily fits within that interpretation of the first prong of the CPNI definition. Sprint's customers can access the commercial mobile service to which they subscribe over a broad geographic area, and their location at a given point in time—and the fact of Sprint's ability to use its network to determinate that location—is reasonably understood as associated with or a reference to the location of the Sprint telecommunications service.⁹⁷ Consequently, consistent with our assessment in the *NAL*,⁹⁸ we find this to be information that "relates to" the location of Sprint's telecommunications service within the meaning of the first prong of the CPNI definition.⁹⁹

27. In the alternative, even if the term "of use" modified "location," we still conclude the information at issue fits within the first prong of the definition of CPNI. Sprint does not dispute the *NAL*'s explanation that customers' devices and Sprint's network regularly exchange information as necessary for customers to send and receive calls.¹⁰⁰ To the extent that Sprint contends that this does not represent use of the telecommunications service because it merely enables the provision of that service, Sprint does not demonstrate why that is a fair characterization or why it would represent a meaningful distinction in any case. Consistent with the reasoning of the *NAL*,¹⁰¹ we believe that Sprint's customers subscribe to its commercial mobile service to enable them to receive and transmit calls. When customers' devices are exchanging communications with Sprint's network, and thereby ensuring that they can receive incoming calls and place outgoing calls, we think that is a clear case of using the service to which they have subscribed, even outside the moments in time when they are engaged in calls.¹⁰²

28. We also are unpersuaded by Sprint's arguments that the location information covered by the first prong of the definition of CPNI is limited to call location information for voice calls based on

Proposed Rulemaking, 13 FCC Rcd 8061, 8064-65, para. 2 (1998) ("CPNI includes information that is extremely personal to customers as well as commercially valuable to carriers," including "the types of service offerings to which the customer subscribes").

⁹⁶ 47 U.S.C. § 222(d)(1).

⁹⁷ See, e.g., *NAL*, 35 FCC Rcd at 1660, para. 11 ("Sprint provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on Sprint's wireless network.").

⁹⁸ See, e.g., *NAL*, 35 FCC Rcd at 1669-70, paras. 37, 39.

⁹⁹ See, e.g., *Collins Concise Dictionary*, Third Ed., at 1129 (HarperCollins Pub. 1995) (defining "relate" as, among other things, "establishing association (between two or more things) or (of something) to have relation or reference (to something else)"); *American Heritage Dictionary*, Third Ed., at 695 (Dell Pub. 1994) (defining "relate" as, among other things, "To bring into logical or natural association," "To establish or demonstrate a connection between," or "To have connection, relation, or reference"); *Merriam-Webster's Collegiate Dictionary*, Tenth Ed., at 987 (Merriam-Webster Pub. 1994) (defining "relate" as, among other things, "to show or establish logical or causal connection between"); *The Oxford Paperback Dictionary & Thesaurus*, at 636 (Oxford Univ. Press 1997) (defining "relate" as, among other things, "connect in thought or meaning" or "have reference to").

¹⁰⁰ *NAL*, 35 FCC Rcd at 1669, para. 37.

¹⁰¹ See, e.g., *NAL*, 35 FCC Rcd at 1669-70, paras. 37, 39.

¹⁰² Definitions of "use" appear sufficiently broad to encompass our understanding of the term in this scenario. See, e.g., *Collins Concise Dictionary*, Third Ed., at 1483 (HarperCollins Pub. 1995) (defining "use," among other things, to mean "to put into service or action; employ for a given purpose"); *American Heritage Dictionary*, Third Ed., at 884 (Dell Pub. 1994) (defining "use," among other things, to mean "To put into service; employ" and "To avail oneself of; practice"); *Merriam-Webster's Collegiate Dictionary*, Tenth Ed., at 1301 (Merriam-Webster Pub. 1994) (defining "use," among other things, to mean "to put into action or service: avail oneself of"); *The Oxford Paperback Dictionary & Thesaurus*, at 853 (Oxford Univ. Press 1997) (defining "use," among other things, to mean "cause to act or serve for purpose; bring into service" and "exploit for one's own ends").

what Sprint gleans from other language in section 222.¹⁰³ In addition to the *NAL*'s responses in this regard,¹⁰⁴ we conclude that the use of "location" in (h)(1)(A) as opposed to "call location information" in (d)(4) and (f)(1) must be given some significance.¹⁰⁵ All *location* information is protected as CPNI under (h)(1)(A). But carriers can disclose *call location* information for 911 purposes under (d)(4), which makes sense because 911 calls are *calls*.¹⁰⁶ Nor would it have been irrational for Congress to expressly require opt-in consent for call location information in section 222(f)(1) if the definition of CPNI encompasses other forms of location information, as well. At the time the provision was enacted in 1999, Congress might reasonably have viewed call location information as obviously sufficiently sensitive to necessitate opt-in approval requirements while leaving it to the Commission's discretion whether to require opt-in approval for other location information, just as for other information falling within the definition of CPNI more generally. In addition, the Commission's references to "calls" in a prior order that was focused in significant part on data regarding customers' calls—and which did not purport to exhaustively address the application of section 222 to mobile wireless service—cannot reasonably be read as setting forth the outer bounds of the Commission's understanding of section 222.¹⁰⁷

29. *Second*, the location information at issue was obtained by Sprint solely by virtue of its customer-carrier relationship. The *NAL* explains this in more detail, but the crux of the matter is that:

Sprint provides wireless telephony services to the affected customers because they have chosen Sprint to be their provider of telecommunications service—in other words, they have a carrier-customer relationship. . . . Sprint's customers provided their wireless location data to Sprint because of their customer-carrier relationship with Sprint, ...¹⁰⁸

In sum, the *NAL* reasoned that "[a]lthough Sprint (or others) might also provide non-common-carrier services to the same customer," the customer provided the relevant data "by virtue of the carrier-customer relationship."¹⁰⁹

30. The *NAL* did not specify with precision the standard for applying the second prong of the CPNI definition, and although we elaborate further on some of its contours here, we likewise need not resolve that question with specificity because we find that prong met here under a range of possible approaches. We begin by observing that the second prong of the CPNI definition is focused on a

¹⁰³ See, e.g., *NAL* Response at 9-11; *NAL*, 35 FCC Rcd at 1671, para. 44 (citing LOI Response at 5, Response to Question 4; Supplemental LOI Response at 3, Response to Question 2).

¹⁰⁴ *NAL*, 35 FCC Rcd at 1670, para. 40.

¹⁰⁵ This interpretive approach is consistent with how the Commission has approached the interpretation of section 222 in other contexts in the past. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8084-85, para 32 (1998) (distinguishing the interpretation of different language in section 222(a), (c)(1), and (d)(1), given that, "[u]nder well-established principles of statutory construction, 'where Congress has chosen different language in proximate subsections of the same statute,' we are 'obligated to give that choice effect'"). Particularly given that Sprint neglects this textual distinction in its attempts to rely on legislative history or the rule of lenity, we reject its claims in that regard. See *NAL* Response at 10-11.

¹⁰⁶ Given this predominant—but not exclusive—focus of the 1999 amendments to section 222, the references to call location information in the legislative history cited by Sprint is not surprising. See *NAL* Response at 10. But nothing in the legislative history persuades us that Congress meant to exclude non-call location data from the definition of CPNI.

¹⁰⁷ See generally *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609 (2013) (*2013 CPNI Declaratory Ruling*).

¹⁰⁸ *NAL*, 35 FCC Rcd at 1671, para. 43.

¹⁰⁹ *NAL*, 35 FCC Rcd at 1671, para. 43.

“relationship”—namely, the “carrier-customer relationship.”¹¹⁰ A relationship presumes associations involving at least two parties, and we conclude that it must be understood with that context in mind, rather than focused single-mindedly on one side of the relationship. Our accounting for the customer’s viewpoint is also supported by the statutory text’s focus on whether the information “is made available to the carrier by the customer”—rather than “obtained by the carrier”—“solely by virtue of the carrier-customer relationship.”¹¹¹ Thus, we reject any suggestion by Sprint that the location information at issue here is not CPNI and does not depend exclusively on the carrier-customer relationship¹¹²—we find that suggestion belied by the technical and marketplace realities here, as experienced by Sprint customers.

31. As the *NAL* explains, when a customer subscribes to Sprint’s commercial mobile service, Sprint “enables the connection of a customer’s device to its network for the purpose of sending and receiving calls, and the customer has no choice but to reveal that location to the carrier.”¹¹³ Sprint does not dispute that the carrier-customer relationship fully enables Sprint to obtain the location data at issue here. Likewise, Sprint does not claim that a customer, having subscribed to its commercial mobile service, entered a separate agreement with Sprint for the provision of that location information—or that Sprint’s voice customers had any way to avoid providing that information if they wanted to subscribe to Sprint’s commercial mobile service. Under circumstances such as these, we conclude that the location information at issue from Sprint’s commercial mobile service customers was “made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”¹¹⁴

32. Although we find that reasoning sufficient to resolve the application of the second prong of the CPNI definition, we independently conclude that the same decision is warranted even if we parse the matter more finely. For example, Sprint has sought to rely on the theory that the Company “is acting as an information service provider when it is selling access to its customers’ location information” and that the entire LBS program was an “information service,”¹¹⁵ to take any location information outside the purview of CPNI. But we are not persuaded that the fact that location information can be associated with a non-telecommunications service the carrier also provides (or otherwise facilitates) takes the resulting *relationship* outside the scope of the “carrier-customer” relationship for the specific purposes of the CPNI definition. Nothing dissuades us that the purchase of telecommunications service alone was sufficient to obligate Sprint’s customers to make their location data available to Sprint,¹¹⁶ and in evaluating the second

¹¹⁰ 47 U.S.C. § 222(h)(1)(A).

¹¹¹ 47 U.S.C. § 222(h)(1)(A). Insofar as Sprint has suggested “that it is acting as an information service provider when it is selling access to its customers’ location information,” and thus its receipt of such location information is not “solely by virtue of” its telecommunications service (*see, e.g., NAL*, 35 FCC Rcd at 1671, para. 43), the focus on Sprint’s “telecommunications service” neither reflects the statutory text regarding prong two of the CPNI definition nor does it appropriately account for these concepts underlying the statutory focus on a customer-carrier “relationship.” To be sure, section 222(c)(1) is limited in scope to “a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service.” 47 U.S.C. § 222(c)(1). But in that provision, the required nexus is just that the carrier receive or obtain the CPNI “by virtue” (not “solely by virtue”) of its provision of a telecommunications service. In its *NAL* Response, Sprint disputes whether the location information at issue meets the statutory definition of CPNI in section 222(h)(1)(A), *see NAL* Response at 6-10, but does not contend that, if it does meet that definition, section 222(c)(1) nonetheless should not be interpreted to apply here.

¹¹² *See, e.g., NAL* Response at 10-11 (claiming that because it may be acquired from an “idle device or a device used for a data session” the location information is not CPNI).

¹¹³ *NAL*, 35 FCC Rcd at 1671, para. 44.

¹¹⁴ 47 U.S.C. § 222(h)(1)(A).

¹¹⁵ *NAL*, 35 FCC Rcd at 1670-71, paras. 42-43 (citing Supplemental LOI Response at 3-4, Response to Question 2).

¹¹⁶ Consequently, this is not a situation where we are relying on a theory that the carrier-customer relationship was merely one of a “confluence of multiple factors”—including relationships beyond the carrier-customer relationship itself—that collectively were required for Sprint to obtain the location information at issue here. *Bostock v. Clayton* (continued....)

prong of the CPNI definition in the past, the Commission has noted that a carrier's "unique position with respect to its customers" when the carrier pre-configures a mobile device to collect information can satisfy "the 'carrier-customer relationship' element of the definition of CPNI."¹¹⁷ We recognize that section 153(51) of the Act provides that "[a] telecommunications carrier shall be treated as a common carrier under [the Act] only to the extent that it is engaged in providing telecommunications services."¹¹⁸ But we are far from that scenario here, given the many necessary links to Sprint's telecommunications services for the CPNI definition to apply. For one, the protections of section 222(c) only apply with respect to "information that relates to" certain characteristics of "a telecommunications service subscribed to by any customer of" Sprint.¹¹⁹ And the information must have been provided by consumers in a manner that reflects the statutorily required nexus to Sprint's telecommunications service.¹²⁰ Our interpretation and application of section 222 thus accords with the text of both section 222 and section 153 of the Act, even if it does not reflect the policy that Sprint would prefer.

33. The Commission therefore affirms its finding from the *NAL* that the location information at issue in the LBS program is CPNI.

B. Sprint Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act

34. We reject Sprint's claim that it lacked fair notice that its practices involving customer location information were subject to the Communications Act and potential penalties thereunder.¹²¹ The language of section 222 demonstrates that customer location information is CPNI; Sprint's practices involving CPNI, including customer location information, therefore unquestionably are regulated under the Act and the Commission's CPNI Rules; and Sprint's failure to comply with the requirements of the Act and our rules, including the "reasonable measures" mandate of section 64.2010, foreseeably makes the Company liable for a forfeiture penalty under section 503 of the Act.

35. Sprint argues that the *NAL* "violates due process because the Commission has never previously explained its newfound view that all location information derived from a wireless network is CPNI, nor has it announced any rule requiring providers to shut down or fundamentally alter an entire line of business within 30 days of a press report."¹²² Sprint's arguments are unavailing. As an initial matter, Sprint mischaracterizes the 30-day period during which the Commission did not assess a fine, arguing that the Company did not have fair notice of what it describes as a "rule requiring providers to shut down or fundamentally alter an entire line of business within 30 days of a press report."¹²³ Sprint is mistaken, as the 30-day period cited in *NAL* was not a deadline for which Sprint required fair notice, but rather a grace period during which the Commission used its discretion and did not assess a fine.¹²⁴

Cty., 140 S. Ct. 1731, 1739 (2019) (In contrast to the statute at issue there, Congress "could have added 'solely' to indicate that actions taken 'because of 'the confluence of multiple factors do not violate the law.'"); *cf. id.* (observing that "[o]ften, events have multiple but-for causes"). By contrast, information that carriers obtain independently from public records, for example, would not be information that the customer provided to the carrier solely by virtue of the carrier-customer relationship.

¹¹⁷ 2013 CPNI Declaratory Ruling, 28 FCC Rcd at 9616, para 23.

¹¹⁸ 47 U.S.C. § 153(51).

¹¹⁹ 47 U.S.C. § 222(h)(1)(A).

¹²⁰ 47 U.S.C. § 222(h)(1)(A).

¹²¹ See NAL Response at 4, 13, 21-24

¹²² NAL Response at 21.

¹²³ See NAL Response at 24.

¹²⁴ However, Sprint's existing data security practices were unreasonable both before and after the May 2018 article—the article merely exposed those unreasonable practices. As such, the Commission could have assessed a
(continued....)

36. Sprint also argues that before the Commission imposes what the Company mischaracterizes as a “newfound view” of CPNI,¹²⁵ the Commission must first have “either put this language into [the regulation] itself, or at least referenced this language in [the regulation].”¹²⁶ But the Commission is not limited to this option. When, as in this case, a carrier’s conduct falls within an area subject to regulation by the Commission, it is well established that enforcement action is a proper vehicle to adjudicate the specific bounds of what is lawful and what is not, subject to principles of fair notice.¹²⁷ Contrary to Sprint’s assertion, the Commission is not required by principles of fair notice to announce that LBS data, in particular, meets the definition of CPNI under section 222 of the Act or the Commission’s CPNI Rules before enforcing that statute and those rules with respect to such data.¹²⁸ As the D.C. Circuit has said, “[t]he fair notice doctrine, which is couched in terms of due process, provides redress only if an agency’s interpretation is ‘so far from a reasonable person’s understanding of the regulations that they could not have fairly informed the regulated party of the agency’s perspective.’”¹²⁹ And, in general, fair notice principles require that a regulated party be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.¹³⁰

37. We reject Sprint’s argument that the Commission has improperly applied the *2013 Declaratory Ruling* in this case.¹³¹ In the *2013 Declaratory Ruling*, the Commission previously explained that it would not “set out a comprehensive list of data elements that pertain to a telecommunications service and satisfy the definition of CPNI and those data elements that do not.”¹³² Thus, Sprint cannot reasonably have assumed that the fact a given scenario had not been expressly addressed by Commission rules and precedent meant it fell outside the scope of CPNI and the associated protections of section 222 and the Commission’s implementing rules. To the contrary, the Commission has stated that “implicit in section 222 is a rebuttable presumption that information that fits the definition of CPNI contained in

fine for every single day such unreasonable practices were in place (both before and after the Securus/Hutcheson disclosures)—the 30 days provided Sprint with a grace period to either end the program or reform its practices.

¹²⁵ See NAL Response at 4, 21-24.

¹²⁶ *Id.* at 23 (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1356 (D.C. Cir. 1998)).

¹²⁷ See, e.g., *City of Arlington, Texas v. FCC*, 569 U.S. 290, 307 (2013) (affirmatively stating that “Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication”); *Neustar, Inc. v. FCC*, 857 F.3d 886, 894 (D.C. Cir. 2017); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that “the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application”) (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (stating that “the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency”).

¹²⁸ See NAL Response at 4, 21-24 (claiming that this is a newfound view of CPNI). However, this is not a “newfound view” and, in any event, absolute specificity is not a prerequisite for enforcing a statute or regulation. See, e.g., *United States v. Lachman*, 387 F.3d 42, 56-57 (1st Cir. 2004) (stating the “mere fact that a statute or regulation requires interpretation does not render it unconstitutionally vague,” and that case law “do[es] not stand for the proposition that any ambiguity in a regulation bars punishment”).

¹²⁹ *Mississippi Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 186 (D.C. Cir. 2015) (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998)); see also *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988) (“statutes cannot, in reason, define proscribed behavior exhaustively or with consummate precision”).

¹³⁰ *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) (“In assessing forfeitures against regulated entities, the Commission is required to provide adequate notice of the substance of the rule. . . . The court must consider whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.”) (internal quotations and citations omitted).

¹³¹ See NAL Response at 23-24.

¹³² *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

section 222(h)(1) is in fact CPNI.”¹³³ Moreover, even while declining to comprehensively identify CPNI, including in the case of location information, the Commission emphasized that “location information in particular can be very sensitive customer information.”¹³⁴ In addition, notwithstanding the fair notice claims it makes now, Sprint previously asserted to the Commission that it treated customer location information in an essentially equivalent manner to CPNI.¹³⁵

38. Further, our conclusion that the location data at issue here fall within the definition of CPNI flows from the text of section 222 is consistent with the Commission’s approach to interpreting that provision in prior precedent. As noted, CPNI is defined by statute, in relevant part, to include “information that relates to . . . the location . . . of a telecommunications service.”¹³⁶ That definition further directs us to evaluate whether the relevant information “is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”¹³⁷ Our interpretation of those provisions above relies on the statutory text, interpreted consistent with ordinary tools of statutory interpretation, and is consistent with prior Commission precedent.

39. Finally, Sprint had fair notice of its obligations with respect to CPNI under section 64.2010 of the Commission’s rules. In pertinent part, that rule provides that “[t]elecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.”¹³⁸ Beyond “requir[ing] carriers to implement the specific minimum requirements set forth in the Commission’s rules,” to comply with section 64.2010, the Commission “further expect[s] carriers to take additional steps to protect the privacy of CPNI to the extent such additional measures are feasible for a particular carrier.”¹³⁹ The Commission granted carriers flexibility to incorporate the specific measures and practices that are consistent with their otherwise-existing “technological choices.”¹⁴⁰ In the *2007 CPNI Order*, the Commission also explained, for example, that “a carrier that practices willful blindness” regarding unauthorized disclosure of CPNI likely “would not be able to demonstrate that it has taken sufficient measures” to discover and protect against such conduct.¹⁴¹ And in the same order, the Commission likewise identified the limitations of relying on “contractual safeguards” to address risks

¹³³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, et al.*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14495-96, para. 167 (1999). Although the Commission was responding, in part, to a request for clarification from MCI regarding “laundering” of CPNI by virtue of transfers to affiliated or unaffiliated entities, it was not limited just to that scenario alone. *See, e.g., id.* at 14495, para. 166 (describing the MCI request for clarification being addressed as, among other things, “seek[ing] clarification that there is a rebuttable presumption that customer-specific information in a carrier’s files was received on a confidential basis or through a service relationship governed by section 222”).

¹³⁴ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹³⁵ *See* LOI Response at 1, Response to Question 1. Sprint stated that “it implements CTIA’s Best Practices and Guidelines for LBS and requires compliance with the same in contracts related to LBS.” *Id.* Sprint “requires customer consent to access or share the customer’s location information” except for certain instances involving child safety and lawful demands for location information in response to government investigation. *Id.*

¹³⁶ 47 U.S.C. § 222(h)(1)(A); *see also, e.g., 2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9616, para. 22 n.48 (citing section 222(h)(1)(A) as “defining CPNI to include ‘information that relates to the . . . location . . . of a telecommunications service subscribed to by any customer of a telecommunications carrier’”).

¹³⁷ 47 U.S.C. § 222(h)(1)(A).

¹³⁸ 47 CFR § 64.2010(a).

¹³⁹ *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64.

¹⁴⁰ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65; *see also, e.g., id.* at 6945-46, para. 34 (“we permit carriers to weigh the benefits and burdens of particular methods of possibly detecting pretexting,” which “will allow carriers to improve the security of CPNI in the most efficient manner”).

¹⁴¹ *2007 CPNI Order*, 22 FCC Rcd at 6946, para. 35.

once CPNI has been disclosed outside the covered carrier.¹⁴² Ultimately, while providing guidance regarding compliance with section 64.2010, the Commission also recognized that it was necessary to guard against providing bad actors “a ‘roadmap’ of how to obtain CPNI without authorization.”¹⁴³ This guidance provides sufficient direction for Sprint to understand its obligations under the rule as relevant here.

40. Thus, Sprint could reasonably have ascertained that (1) any enumeration of CPNI data elements set out by the agency was not exhaustive; (2) the customer location information at issue would be found to meet the definition of CPNI; and (3) Sprint would be subject to forfeiture penalties for failing to protect that customer location information as required under section 222 and the Commission’s CPNI Rules.

C. Sprint Failed to Take Reasonable Steps to Protect CPNI

41. Sprint violated section 222 of the Act and section 64.2010 of our rules by failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information.¹⁴⁴ While our rules recognize that companies cannot prevent all data breaches, the rules require carriers to take reasonable steps to safeguard their customers’ CPNI and discover attempts to gain access to their customers’ CPNI. Further, as noted below, where an unauthorized disclosure has occurred—as here—the burden of production shifts to the carrier to offer evidence that it did have reasonable measures in place. Once the carrier offers some evidence of those safeguards, the rebuttable presumption falls away, and the Commission bears the burden of persuasion and must find by a preponderance of the evidence that the carrier’s safeguards were unreasonable in order to find a violation of 47 CFR § 64.2010(a). Sprint contends that the Securus disclosures to Hutcheson did not constitute legal violations of section 222 for which Sprint can be held responsible.¹⁴⁵ Sprint then claims that it acted reasonably to protect its customers’ location information both before and after the Securus disclosure came to light.¹⁴⁶ Sprint also argues that the Commission improperly shifted the burden of proving that such protections were reasonable to Sprint.¹⁴⁷ We find Sprint’s arguments unpersuasive.

1. Sprint’s Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222

42. As an initial matter, we conclude that it was not just disclosures to Hutcheson that were unauthorized. Rather, Securus’s entire location-finding service¹⁴⁸ (as detailed in paragraphs 13-14, above) was predicated on unauthorized disclosures. Consistent with Sprint’s own description of events, the program was outside the scope of not only its approved purpose, but also beyond any agreement with either Aggregator (and thus had not been reviewed).¹⁴⁹ Sprint conceded that it was unable to distinguish location requests unrelated to the authorized purpose (which involved an inmate collect-calling service).¹⁵⁰ And, to be clear, none of the records submitted in connection with the location-finding

¹⁴² 2007 CPNI Order, 22 FCC Rcd at 6952-53, para. 49.

¹⁴³ 2007 CPNI Order, 22 FCC Rcd at 6959-60, para. 65.

¹⁴⁴ 47 CFR § 64.2010(a); *see also* 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64 (“We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.”).

¹⁴⁵ *See* NAL Response at 20-21.

¹⁴⁶ *See* NAL Response at 17-20.

¹⁴⁷ *See* NAL Response at 15-17.

¹⁴⁸ *See* NAL, 35 FCC Rcd at 1664-65, paras. 20-21 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

¹⁴⁹ *See* LOI Response at 8, Response to Question 8; NAL, 35 FCC Rcd at 1665, paras. 22-23.

¹⁵⁰ *See* NAL, 35 FCC Rcd at 1665, 1683-84, paras. 22, 84.

service evinced a consumer's actual opt-in consent. Therefore, every time Securus submitted a request for location information under the guise of its approved purpose (a purpose that required consumer consent) and Sprint provided the requested location information, a separate, unauthorized disclosure occurred. Separately and independently, there is no indication that the law enforcement requests were properly reviewed by Securus, as evidenced by the ready success of Hutcheson's thinly veiled ruse.¹⁵¹ Thus, the disclosures made to Hutcheson were doubly unauthorized under section 222(c)(1): first, Securus used the façade of their approved purpose to hide the true purpose and destination of the request, resulting in Sprint's unauthorized disclosure of location information to Securus. Second, Hutcheson likewise submitted blatantly fake requests to Securus under the guise of law enforcement, resulting in Securus's unauthorized disclosure of location information to Hutcheson.¹⁵²

43. Sprint attempts to avoid this conclusion by contending that it cannot be held responsible for the unauthorized disclosures because "Securus and other third-party location-based service providers can neither be deemed 'agent[s]' of Legacy Sprint nor 'person[s]' acting for' Legacy Sprint within the meaning of Section 217, at least when they misappropriate information provided by Legacy Sprint."¹⁵³ But as the *NAL* explained, "[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers' CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law."¹⁵⁴ Although the *NAL* noted that "Sprint does not appear to argue that situation is present here,"¹⁵⁵ the totality of the record persuades us that this is, in fact, the import of the facts and Sprint's arguments here.

44. In making these arguments, Sprint appears to conflate distinct obligations it is subject to under section 222 of the Act and the Commission's rules. In particular, Sprint contends that "the *NAL* suggests that Section 217 of the Act would allow it to hold Legacy Sprint strictly liable for the acts of the third-party location-based service providers, even if Legacy Sprint's program reasonably protected customer location information."¹⁵⁶ Even setting aside Sprint's erroneous assumption about the reasonableness of its safeguards, carriers' legal duty to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI" under section 64.2010(a) of the rules is separate from the additional restriction on unauthorized use or disclosure in section 222(c)(1) of the Act and section 64.2007(b) of the Commission's rules.¹⁵⁷ Rather than incorporating some kind of *de minimis*

¹⁵¹ See Hutcheson Sentencing Memo at 3-4 (explaining that after uploading documents that were blatantly not legal authorizations, location information was immediately transmitted with no intervening time for any documents to be reviewed for validity); *NAL*, 35 FCC Rcd at 1664-65, para. 21 (describing Hutcheson's uploading of documents that were blatantly not legal authorizations in order to obtain location information). As the *NAL* explained, "Sprint does not deny the existence of the Securus location-finding service nor the abuse of that system by Hutcheson." *NAL*, 35 FCC Rcd at 1665, para. 22. Sprint likewise does not dispute here that Hutcheson was able to access location data by providing documents that were blatantly not legal authorizations as described in the *NAL* and confirmed in the Hutcheson Sentencing Memo, and also does not provide any reason to believe that Securus (let alone Sprint) could have or would have made that assessment before providing the location data. While Sprint states in its *NAL* Response that entries in a spreadsheet relied upon in the *NAL* "contain no information demonstrating . . . that any CPNI was disclosed without lawful authorization," *NAL* Response at 6, it does not elaborate on any theory of how Sprint possibly could have obtained the authorization it was required to obtain under section 222(c)(1) and section 64.2007(b) of the rules under the circumstances here. We thus are unpersuaded by that cursory assertion.

¹⁵² See Hutcheson Sentencing Memo at 3-4 (Hutcheson "uploaded legally defective search warrants that either did not authorize the acquisition of location data, were unsigned, or had no connection to the targeted phone user" and in "most of these instances . . . even notarized his own signature."); see also *NAL*, 35 FCC Rcd at 1664-65, para. 21.

¹⁵³ *NAL* Response at 20.

¹⁵⁴ *NAL*, 35 FCC Rcd at 1673, para. 51 n.147.

¹⁵⁵ *NAL*, 35 FCC Rcd at 1673, para. 51 n.147.

¹⁵⁶ *NAL* Response at 20.

¹⁵⁷ 47 U.S.C. § 222(c)(1); 47 CFR § 64.2007(b).

exception or reasonableness standard, section 222(c)(1)'s statutory restriction on use and disclosure is unequivocal, which is likewise reflected in section 64.2007(b) of the Commission's rules.¹⁵⁸ And as the *NAL* further explained, "the obligation to protect CPNI falls on *telecommunications carriers*; the carrier must obtain customer approval to use, disclose, or permit someone else to access the CPNI for any purpose not strictly related to the purpose for which it was provided to the carrier."¹⁵⁹ As the *NAL* explained, "[i]f Sprint was relying on third parties to satisfy its obligations to obtain consent, then it is as liable for those third parties' failures as it would be if they had been the failures of Sprint itself. If not, then Sprint effectively granted those third parties the capability to access the CPNI of its customers without customer approval."¹⁶⁰

45. As already noted, Sprint contends that under the circumstances at issue here, Securus and other third-party LBS providers are neither agents nor persons acting for Sprint within the meaning of section 217.¹⁶¹ Despite this contention, Sprint does not claim that it directly obtained the required approval from the customers whose location information it was sharing—nor could it, given that its entire location-based services program was premised on the LBS providers obtaining customer authorization.¹⁶² Therefore, consistent with the *NAL*, we find that the Securus disclosures, including those made to Hutcheson, were unauthorized and Sprint was appropriately admonished in relation to such disclosures.

2. Sprint's Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures

46. The Commission affirms the *NAL* and finds that Sprint failed to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers' location information. As fully laid out in the *NAL*, the record not only shows that Sprint did not have reasonable protections in place prior to 2018 *New York Times* article detailing the Securus/Hutcheson breaches,¹⁶³ but also that Sprint failed to promptly address its demonstrably inadequate CPNI safeguards after Securus/Hutcheson disclosure.¹⁶⁴

47. Sprint attempts to excuse its unreasonable practices by cataloging the steps it did take before and after the *New York Times* article. As discussed in the *NAL*, Sprint argues that, prior to the Securus disclosure, its efforts conformed to the CTIA Guidelines for ensuring customer consent to the use of location data.¹⁶⁵ As the *NAL* further explains, Sprint states that its safeguards included various contractual, procedural, and technical safeguards.¹⁶⁶

48. The safeguards that Sprint had in place before the Securus disclosure were not reasonable. As fully explained in the *NAL*:

¹⁵⁸ We note that Sprint does not contend that it literally would not have been possible to avoid the disclosures, so our interpretation does not demand the impossible of Sprint or any other carrier.

¹⁵⁹ *NAL*, 35 FCC Rcd at 1672-73, para. 49.

¹⁶⁰ *NAL*, 35 FCC Rcd at 1674, para. 53.

¹⁶¹ *NAL* Response at 20.

¹⁶² See, e.g., *NAL*, 35 FCC Rcd at 1662-63, para. 15.

¹⁶³ See *NAL*, 35 FCC Rcd at 1674-76, paras. 55-63.

¹⁶⁴ See *NAL*, 35 FCC Rcd at 1677-80, paras. 64-75.

¹⁶⁵ See *NAL*, 35 FCC Rcd at 1662, 1674-75, 1676, paras. 14, 58, 62.

¹⁶⁶ See *NAL*, 35 FCC Rcd at 1662-64, 1674-76, paras. 14-19, 58-63. In its *NAL* response, Sprint does not meaningfully elaborate on those safeguards. See, e.g., *NAL* Response at 19 (asserting that Sprint's "short-term contracts [with the Aggregators] contained strong measures to protect location information," without further elaboration).

[The CTIA] guidelines focus on best practices for notice and consent by location-based service providers. But they do not include best practices recommendations for carriers that sell access to their customers' location information to location-based service providers. For example, they do not offer guidance to carriers on how to assure that location-based service providers comply with a contractual obligation to access location information only after furnishing proper notice and receiving customer consent.¹⁶⁷

As for the other safeguards that Sprint implemented to protect its customers' location information against unauthorized access, these safeguards relied almost entirely upon contractual agreement, passed on to location-based service providers through an attenuated chain of downstream contracts.¹⁶⁸ To enforce these safeguards, Sprint would have needed to take steps to determine whether they were actually being followed. Further, Sprint would have had to have a way of distinguishing between a legitimate request for customer location information (i.e., made pursuant to valid consumer consent) and an illegitimate one (e.g., the Securus/Hutcheson requests absent valid customer consent). Although the Commission requested that Sprint describe its efforts to verify that LBS providers obtained valid customer consent for related location requests,¹⁶⁹ nothing that Sprint has provided shows that it made any meaningful efforts or that it could effectively distinguish between valid and unauthorized requests for location information. And any further claim by Sprint that its contractual safeguards were effective are undermined by the inexorable fact that after the Securus disclosure, Sprint was unable to "compel Securus to cooperate with Sprint's investigation."¹⁷⁰ Likewise, the shortcoming in Sprint's reliance on contractual protections is further reinforced by Sprint's inability to obtain information from Zumigo about its relationship with MicroBilt, as evidenced by the fact that "Zumigo ignored Sprint's questions."¹⁷¹ "Whatever a company's justification for denying or ignoring Sprint's requests for information, the refusals are further evidence of the fact that Sprint disclosed CPNI to third parties over which it had little or no control or authority."¹⁷²

49. Likewise, Sprint's safeguards after the Securus disclosure were also unreasonable. Sprint became keenly aware of the inadequacy of its safeguards after the May 2018 *New York Times* article, and again after Securus's resistance to Sprint's subsequent investigation. Nonetheless, Sprint did not and cannot demonstrate that its safeguards were made reasonable in the months that followed the 2018 *New York Times* article. In fact, rather than promptly implementing reasonable safeguards, Sprint continued to sell access to its customers' location information under (for all intents and purposes) the *same system* that was exploited by Securus and Hutcheson.¹⁷³

50. We reject Sprint's attempt to dispute that the reports of the Securus and Hutcheson breaches should have made Sprint aware of the need for greater safeguards.¹⁷⁴ Sprint observes that media reports are not always completely accurate and are treated as inadmissible hearsay under the Federal Rules of Evidence and likewise have at times been rejected as reliable evidence by the Commission.¹⁷⁵

¹⁶⁷ *NAL*, 35 FCC Rcd at 1676, para. 62.

¹⁶⁸ *See NAL*, 35 FCC Rcd at 1674-76, paras. 58-63.

¹⁶⁹ *See* Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Maureen Cooney, Head of Privacy, Office of Privacy, Government Affairs, Sprint Corp. at 3, Question 5.e (Sept. 13, 2018) (on file in EB-TCD-18-00027700) (LOI).

¹⁷⁰ *NAL*, 35 FCC Rcd at 1677-78, para. 68. As the Commission said in the *NAL*, "[t]he weakness of Sprint's arguments that its contract-based model provided reasonable protection of CPNI is further underscored" by the fact that Sprint could not compel Securus to cooperate. *Id.*

¹⁷¹ *NAL*, 35 FCC Rcd at 1677-78, para. 68.

¹⁷² *NAL*, 35 FCC Rcd at 1677-78, para. 68.

¹⁷³ *See NAL*, 35 FCC Rcd at 1677, para. 64.

¹⁷⁴ *See NAL* Response at 3-4, 14-15, 17-18.

¹⁷⁵ *See NAL* Response at 18.

But whatever one might say about media reports in other contexts, in fact Sprint did view the May 2018 *New York Times* article as sufficiently reliable to call for some response, for example, explaining that “[a]fter reports of the Securus incident, Legacy Sprint suspended location information sharing with LocationSmart on May 25, 2018, once it confirmed that data sharing via LocationSmart with 3CInteractive and with Securus had occurred for an unknown and unapproved purpose.”¹⁷⁶ Nor are we persuaded that evidentiary standards governing admissibility in federal court or the statutory standard required for showings in Commission licensing proceedings should govern whether material provides a sufficient basis for a carrier to be on notice of vulnerabilities in its measures to discover and protect against unauthorized disclosures of CPNI.¹⁷⁷ Nothing in the 2007 CPNI Order that adopted section 64.2010(a) of the Commission’s rules suggests that the reasonableness standard was intended to be interpreted based on those other legal frameworks. Indeed, newspaper articles were among the sources of evidence relied upon by the Commission in that proceeding.¹⁷⁸ The case for Sprint’s ability to ignore the May 2018 *New York Times* article despite its obligations under section 64.2010(a) of the rules to discover and protect against breaches is especially weak here, where the *New York Times* article was based in part on charges filed against Hutcheson in state and federal court.¹⁷⁹

51. Although Sprint touts the fact that after the May 2018 *New York Times* article it “suspended location information sharing with LocationSmart on May 25, 2018,”¹⁸⁰ the NAL explained that Sprint “undermined this step by reinstating LocationSmart (and two of its customers) into the program” three months later.¹⁸¹ Further, cutting off some LBS providers’ access to Sprint location information did not improve the safeguards for consumers whose location information could be disclosed under the location data sharing arrangements that remained in place. While Sprint contends that its

¹⁷⁶ NAL Response at 18-19. Likewise, Sprint found the media reliable enough to provide sufficient grounds to act in other situations, as well. See, e.g., NAL Response at 19 (“In January 2019, [Sprint] learned through media reports that Zumigo allegedly worked with a company call MicroBilt as a sub-aggregator with respect to LBS. [Sprint] could not identify any record of Zumigo obtaining [Sprint’s] prior written consent before using MicroBilt as a sub-aggregator, as it was required to do by contract. Accordingly, [Sprint] demanded that information sharing with MicroBilt immediately cease. . . .” (citations omitted)).

¹⁷⁷ See NAL Response at 18 (citing cases applying the Federal Rules of Evidence and Commission licensing decisions).

¹⁷⁸ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6933-35, para. 12 & n.31 (2007) (2007 CPNI Order) (stating that “[t]he carriers’ record on protecting CPNI demonstrates that the Commission must take additional steps to protect customers from carriers that have failed to adequately protect CPNI,” and citing, among other things, Frank Main, *Anyone Can Buy Cell Phone Records: Online Services Raise Security Concerns for Law Enforcement*, Chi. Sun Times, Jan. 5, 2006, at A3; Frank Main, *Cell Call Lists Reveal Your Location: Anybody Can Pay to Track Where You Used Phone*, Chi. Sun Times, Jan. 19, 2006, at A3; and Frank Main, *Blogger Buys Presidential Candidate’s Call List: “Nobody’s Records Are Untouchable,” as \$90 Purchase Online Shows*, Chi. Sun-Times, January 13, 2006, at A10.); *id.* at 6933-35, para. 12 & n.37 (stating that “companies have sued dozens of people whom they accuse of fraudulently obtaining phone records,” and citing, among other things, Matt Richtel and Miguel Helft, *An Industry Is Based on a Simple Masquerade*, N.Y. Times, Sept. 11, 2006, at C1).

¹⁷⁹ See, e.g., Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html> (“Thousands of jails and prisons across the United States use a company called Securus Technologies to provide and monitor calls to inmates. But the former sheriff of Mississippi County, Mo., used a lesser-known Securus service to track people’s cellphones, including those of other officers, without court orders, according to charges filed against him in state and federal court. . . .”).

¹⁸⁰ See NAL Response at 18-19. Sprint also had provided Zumigo 90 days’ notice of termination, but ended up renewing its contract with that aggregator in October 2018. NAL Response at 19; NAL, 35 FCC Rcd at 1679-80, para. 74.

¹⁸¹ NAL, 35 FCC Rcd at 1677, para. 66.

contracts with the Aggregators after the May 2018 *New York Times* article contained “strong measures to protect location information,”¹⁸² as with Sprint’s prior reliance on contracts, such protections only could be meaningful if effectively enforced. As the *NAL* explained, new procedures that Sprint developed for use in conjunction with the contractual protections “failed to address key weaknesses with Sprint’s location-based services program, and there is little evidence that Sprint actually followed through with these policies in a way that had any meaningful impact.”¹⁸³ Furthermore, “the January 8, 2019, *Motherboard* report on its success purchasing customer location information that was disclosed to MicroBilt perfectly illustrates the vulnerability that remained in Sprint’s aggregator program” given that Sprint’s “so-called ‘improved’ safeguards . . . failed to (1) detect the presence of an apparently unauthorized location-based service provider able to submit requests via Zumigo or (2) prevent that entity from obtaining Sprint’s customer location information without consent.”¹⁸⁴ Thus, after considering all of the data security measures that Sprint implemented in response to the Securus disclosure,¹⁸⁵ we conclude that these measures were inadequate.

52. Sprint further argues that the Commission fails to appropriately account for the fact that the LBS providers were providing “valuable services.”¹⁸⁶ We disagree. The issue here is not whether there are any beneficial services offered by LBS providers, but whether Sprint reasonably protected its customers’ location information. And there is no question of the risks that remained in Sprint’s measures after the May 2018 *New York Times* article, given the subsequent unknown and unapproved access by MicroBilt, as discussed in the *NAL*.¹⁸⁷ In any event, because of the sensitive personal information involved, the benefits of LBS must be weighed against the risks; here, the risks were grave, particularly because Sprint did not have a reliable way of confirming customer consent. The Commission considered Sprint’s arguments, but finds they are outweighed by these risks.

53. The *NAL* listed numerous steps that could have been taken to squarely address the proven vulnerability, up to and including deploying enhanced measures to verify consumer consent (even directly verifying consumer consent) and shutting down the LBS program.¹⁸⁸ Rather than taking definitive steps to remedy the obvious LBS program issues, Sprint instead took piecemeal steps. Moreover, the steps Sprint took did not rectify the systemic vulnerabilities at the heart of its LBS program—including relying

¹⁸² *NAL* Response at 19.

¹⁸³ *NAL*, 35 FCC Rcd at 1678-79, para. 71; *see also id.* at 1666, para. 26 (discussing the measures Sprint began formalizing in June 2018); *id.* at 1678, para. 69 (“Sprint failed to provide any evidence showing that it sought to uncover other unauthorized programs, abuses in its authorized programs, or other weaknesses in its oversight of access to customer location information.”).

¹⁸⁴ *NAL*, 35 FCC Rcd at 1679, paras. 72-73. Sprint asserts that “there is no evidence or allegation that any location information was improperly disclosed in relation to those [post-*New York Times* article] contracts.” *NAL* Response at 19. But pointing to specific unauthorized disclosures for particular, identified customers is not the only possible grounds for finding Sprint’s procedures unreasonable. Our analysis of the merits of those procedures, particularly when coupled with the MicroBilt’s access that was unknown to Sprint and nonetheless had access to Sprint customers’ location information starkly reveal the flaws in Sprint’s safeguards.

¹⁸⁵ *See NAL* Response at 18-20.

¹⁸⁶ *NAL* Response at 20. Sprint further asserts that Zumigo not only was offering valuable services but “was not implicated in the Securus incident.” *NAL* Response at 19. Notably, however, Sprint’s measures were not what identified the unauthorized disclosures in the case of Securus and Hutcheson. Thus, in the face of what we see as the failing in a fundamental aspect of Sprint’s safeguards, we reject the theory that the reasonableness of those measures in the case of Zumigo can be inferred from the fact that even more unauthorized disclosures have not been publicly identified.

¹⁸⁷ *NAL*, 35 FCC Rcd at 1679, paras. 72-73; *see also NAL* Response at 19-20 (discussing MicroBilt’s access to Sprint customers’ location information and Sprint’s resulting decision to terminate its contract with Zumigo).

¹⁸⁸ *See NAL*, 35 FCC Rcd at 1677-80, paras. 65-74.

on third parties to obtain customer consent for the disclosure of location information and failing to verify the validity of that consent.

54. Sprint's attempts to characterize the Commission as relying on an extreme strict liability-type approach fall short, as well.¹⁸⁹ Section 64.2010 of the rules requires only reasonable measures—not perfect ones—but that is not enough to help Sprint here. Contrary to Sprint's suggestion, this is not a situation where the Commission is relying on 20/20 hindsight after a breach to find a violation of section 64.2010(a) of the rules based on any shortcoming in a carrier's measures, no matter how small, yielding an approach that results in strict liability contrary to the reasonableness standard reflected in that rule.¹⁹⁰ Rather, we have carefully examined Sprint's procedures, including the fundamental flaws in those safeguards, such as the shortcomings in Sprint's reliance on contractual protections to ensure customer consent.¹⁹¹ Our assessment under section 64.2010(a) thus is a straightforward evaluation of reasonableness, consistent with the text of the rule.

3. Sprint Bore the Burden of Production

55. As an initial matter, the Commission notes that for the reasons discussed above and the analysis contained in the *NAL*, the preponderance of the evidence shows that Sprint did not use reasonable safeguards throughout the period of the violation.¹⁹² As such, while the *NAL* discussed Sprint's burden of production to demonstrate that its protection of customer CPNI was reasonable,¹⁹³ that burden-shifting is not necessary given the preponderance of the evidence. Nonetheless, even if unnecessary to prove Sprint's violations in this matter, the *NAL* properly shifted the burden of production to Sprint.

56. First, as the *NAL* explained¹⁹⁴ and consistent with the *2007 CPNI Order*, where there is evidence of an unauthorized disclosure, the Commission will infer from that evidence that a carrier's practices were unreasonable unless the carrier offers evidence demonstrating that its practices were reasonable.¹⁹⁵ In the *NAL*, the Commission found that Sprint failed to demonstrate that its safeguards were reasonable following the disclosure of Securus's unauthorized location-finding service in May 2018.¹⁹⁶

57. Sprint acknowledges that the *NAL* based its approach on the *2007 CPNI Order*,¹⁹⁷ explaining that "where an unauthorized disclosure has occurred . . . the responsible carrier then shoulders the burden of proving the reasonableness of its measures to protect consumer data."¹⁹⁸ However, Sprint is incorrect when it asserts that the *2007 CPNI Order* cannot support the burden-shifting approach in cases

¹⁸⁹ See *NAL Response* at 15, 18, 20.

¹⁹⁰ See *NAL Response* at 15, 18.

¹⁹¹ *NAL*, 35 FCC Rcd at 1674-80, paras. 55-75; *NAL Response* at 18-20.

¹⁹² See *NAL*, 35 FCC Rcd at 1674-80, paras. 55-75.

¹⁹³ See *NAL*, 35 FCC Rcd at 1658-59, 1674, 1677, paras. 8, 56-57, 67.

¹⁹⁴ See *NAL*, 35 FCC Rcd at 1658-59, para. 8.

¹⁹⁵ See *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 (noting that where there is evidence of an unauthorized disclosure, the Commission "will infer . . . that the carrier did not sufficiently protect that customer's CPNI" and that "[a] carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue").

¹⁹⁶ See *NAL*, 35 FCC Rcd at 1674-80, paras. 55-75.

¹⁹⁷ See *NAL Response* at 15-16 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*)).

¹⁹⁸ *NAL*, 35 FCC Rcd at 1674, para. 56.

outside of the pretexting context.¹⁹⁹ The *2007 CPNI Order* afforded adequate notice of the application of burden-shifting in this case. The order did not expressly limit burden-shifting to the pretexting context, instead applying more broadly to unauthorized disclosures of CPNI.²⁰⁰ The rationale applies with equal force to the kind of disclosure at issue here, where a fundamental issue is whether Sprint had reasonable measures to ensure that its customers had in fact consented to the disclosure of their CPNI. Indeed, the breach in the instant case is analogous to pretexting in that it involved fraud in order to obtain access to CPNI.²⁰¹ Broadly, in relation to Securus's entire unauthorized location-finding service, Securus used the pretext that it was requesting location information from Sprint for its approved purpose and that it had explicit customer opt-in consent for the disclosure. Likewise, Hutcheson used the pretext that he had legal authorization or consumer consent when requesting location information from Securus.²⁰² Therefore, applying the burden-shifting to this case is appropriate even to the extent that the disclosures here could be said not to have been pretexting of the same form described in the *2007 CPNI Order*.

58. *Second*, Sprint recognizes that an evidentiary presumption is valid if the circumstances (here, a breach of CPNI) giving rise to that presumption make it more likely than not that the presumed fact (here, that CPNI safeguards were unreasonable) exists.²⁰³ The Commission finds that the unauthorized disclosure in this case gave rise to a rebuttable presumption that Sprint did not reasonably protect customer location information from unlawful access.²⁰⁴ As already discussed, the entire Securus location-finding program was based upon unauthorized disclosures. Though the disclosures to Hutcheson were particularly egregious (given they were essentially doubly unauthorized), *all* of the Securus requests made under the false guise of the approved purpose and Sprint's resultant disclosures of consumer location information were unauthorized. Sprint's existing safeguards and oversight failed to notice and (absent the *New York Times* article) may have never realized that the unauthorized Securus location-finding program existed. Nonetheless, Sprint argues that the Commission cannot use the Securus and Hutcheson breaches to support shifting the burden of production to Sprint to provide evidence of the reasonableness of their post-May 2018 security practices.²⁰⁵ Specifically, Sprint asserts that because no provider can achieve perfection and the appropriate measures to employ can vary by carrier and circumstance, that undercuts the reasonableness of any burden shifting here.²⁰⁶ We disagree.

¹⁹⁹ NAL Response at 16.

²⁰⁰ We thus reject Sprint's claim that "the Commission is attempting to expand the approach" to burden shifting under the *2007 CPNI Order* "without ever having grappled with" petitions seeking reconsideration of that aspect of the *2007 CPNI Order*. NAL Response at 19 n.50. Burden shifting here falls within the scope of what was provided for in the *2007 CPNI Order*, which was not stayed pending action on those petitions for reconsideration. And in any case, Sprint has availed itself of the opportunity to contest the substantive merits of burden shifting in this enforcement proceeding.

²⁰¹ The breach at issue here arguably falls within the letter of criminal pretexting. See 18 U.S.C. § 1039.

²⁰² As explained in the *NAL*, "Hutcheson submitted thousands of unauthorized location requests via the Securus service between 2014 and 2017, in some cases 'upload[ing] entirely irrelevant documents including his health insurance policy, his auto insurance policy, and pages selected from Sheriff training manuals' in lieu of genuine legal process." *NAL*, 35 FCC Rcd at 1664-65, para. 21; see also *supra* para. 14.

²⁰³ See NAL Response at 17 n.10.

²⁰⁴ See *2007 CPNI Order*, 22 FCC Rcd at 6929, 6959, paras. 3, 63. A presumption is only permissible if there is "a sound and rational connection between the proved and inferred facts," and when "proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact . . . until the adversary disproves it." *Chemical Mfrs. Ass'n v. Department of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997) (quoting *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 788-89 (1990)) (internal citation and quotation marks removed).

²⁰⁵ See NAL Response at 15-17.

²⁰⁶ See NAL Response at 16-17.

59. In the *NAL*, we found that Sprint apparently violated section 222(c) of the Act and section 64.2007(b) of our rules in connection with its unauthorized disclosures of CPNI to Hutcheson.²⁰⁷ This is further bolstered by the Department of Justice’s case against Hutcheson.²⁰⁸ And though the Commission opted to admonish Sprint only for the unauthorized disclosures made to Hutcheson, it would have been appropriate to admonish Sprint for all the disclosures it made to Securus in relation to the unauthorized location-finding service. In the *NAL*, we clearly explained that, pursuant to section 217 of the Act,²⁰⁹ carriers cannot disclaim their obligations to protect customer CPNI by delegating those obligations to third parties.²¹⁰ We reiterate here that “Sprint is not absolved from liability simply because it was not directly responsible for operating the programs under which unauthorized disclosures occurred.”²¹¹ And as the *NAL* explained, “[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers’ CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law.”²¹² Further, section 222(c)(1) of the Act²¹³ makes the responsibility for avoiding unauthorized disclosures a carrier obligation and prohibits use and disclosure except in certain narrow circumstances, without any reasonableness criterion. Sprint should, therefore, be able to justify any unauthorized disclosure. Given that multiple breaches occurred here and that the “reasonable measures” obligation is a *continuing* obligation, the Commission’s application of an evidentiary presumption based upon the disclosures involving Hutcheson and the imposition of a burden to produce evidence of reasonable protections during the later violations period was reasonable—particularly because, as discussed, those safeguards did not materially change in the interim timeframe.

60. The unauthorized disclosure at issue gave rise to a rebuttable presumption that Sprint did not adequately protect customer information from unlawful access. The burden of production then shifted to Sprint to offer evidence that it had reasonable safeguards in place.²¹⁴

61. Rather than taking reasonable steps to safeguard its customers’ location information after the Securus/Hutcheson disclosures were reported,²¹⁵ Sprint placed its customers’ location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers’ location information. For these reasons, we conclude that Sprint failed in its obligation under section 222 and our rules to have reasonable measures in place to discover and protect against attempts to gain unauthorized access to its customers’ CPNI.

²⁰⁷ See *NAL*, 35 FCC Rcd at 1672-74, paras. 46-54. “The evidence reflects that Hutcheson used the Securus service to obtain the location information of Sprint customers. Sprint shared the information with LocationSmart, which then shared it with 3Cinteractive, which then shared it with Securus. *Id.* at 1672, para.47.

²⁰⁸ See, e.g., Hutcheson Sentencing Memo.

²⁰⁹ 47 U.S.C. § 217.

²¹⁰ See *NAL*, 35 FCC Rcd at 1659, para. 9. Under section 217, “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.” 47 U.S.C. § 217.

²¹¹ See *NAL*, 35 FCC Rcd at 1672-73, para. 49.

²¹² *NAL*, 35 FCC Rcd at 1673, para. 51 n.147.

²¹³ 47 U.S.C. § 222(c)(1).

²¹⁴ We note that in some instances—most notably with regard to various reviews and investigations that implicated the LBS program and over which Sprint asserted privilege—Sprint claimed to have taken certain reasonable steps, but did not produce documentary evidence of those steps. See *NAL*, 35 FCC Rcd at 1664, 1678, paras. 19, 69.

²¹⁵ Many of the possible reasonable steps were enumerated in the *NAL*. See *NAL*, 35 FCC Rcd at 1677-80, paras. 65-74.

D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent

62. After considering the evidence in the record, the relevant statutory factors, the Commission's *Forfeiture Policy Statement*, and the arguments advanced by Sprint in the NAL Response, we find that Sprint is liable for a total forfeiture of \$12,240,000 for its violations of section 222 of the Act and section 64.2010 of the Commission's rules.²¹⁶ As explained in the *NAL*, this figure resulted from applying a base forfeiture of \$40,000 for the first day of each such violation and a \$2,500 forfeiture for the second and each successive day the violations continued (excluding the 30-day grace period granted by the Commission).²¹⁷ The Commission found in the *NAL* that Sprint apparently engaged in 11 continuing violations—one for each ongoing relationship with a third-party LBS provider or aggregator that had access to Sprint customer location information more than 30 days after publication of the *New York Times* report—and that each violation continued until Sprint terminated the corresponding entity's access to customer location information.²¹⁸ Using this methodology, the Commission found Sprint apparently liable for a total base forfeiture of \$6,120,000. Upon considering the nature of the violations and the risk of harm they posed to consumers, the Commission then applied a 100% upward adjustment to the base forfeiture amount, resulting in a total proposed forfeiture of \$12,240,000.²¹⁹

63. Sprint challenges these forfeiture calculations with two principal arguments. *First*, Sprint argues that the *NAL* describes at most a single continuing violation, not a separate violation for each of the 11 entities participating in Sprint's LBS program. As such, according to Sprint, the forfeiture exceeds the applicable statutory maximum.²²⁰ *Second*, Sprint challenges the Commission's application of a 100% upward adjustment to the base forfeiture. Sprint argues that in determining the amount of the upward adjustment, the Commission impermissibly cited to the same factors used for determining the base forfeiture amount.²²¹ Sprint also contends that no upward adjustment is warranted because it did not engage in egregious or intentional misconduct or cause substantial harm to consumers.²²² For the reasons discussed below, we are not persuaded by any of these arguments and decline to cancel or reduce the forfeiture proposed in the *NAL*.

1. The Commission Reasonably Found that Sprint Engaged in 11 Continuing Violations

64. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against Sprint of up to \$204,892 for each day of a continuing violation, up to a statutory maximum of \$2,048,915 “for any single act or failure to act.”²²³ The Commission found that, because Sprint permitted 11 separate entities to access its customers' location information in the apparent absence of reasonable safeguards, the Company engaged in 11 continuing violations of section 222 of the Act and section 64.2010 of the Commission's rules. Sprint challenges this methodology, arguing that “[n]one of the 11 entities included in this calculation was accused of misappropriating data” and that to the extent Sprint violated section

²¹⁶ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

²¹⁷ *NAL*, 35 FCC Rcd at 1682, para. 80.

²¹⁸ *NAL*, 35 FCC Rcd at 1682, para. 81.

²¹⁹ *NAL*, 35 FCC Rcd at 1683-84, paras. 84-87.

²²⁰ *NAL* Response at 25-26.

²²¹ *NAL* Response at 26.

²²² *NAL* Response at 26-29.

²²³ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any 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 19-1325 (EB 2019).

64.2010 by allowing them to continue operating, it “did not have any reason or occasion to make 11 separate decisions.”²²⁴ Sprint therefore asserts that there could have been at most one continuing violation (subject to the \$2,048,915 penalty cap) and the *NAL*’s finding of 11 separate continuing violations (one for each LBS provider or Aggregator) constitutes an impermissible attempt to circumvent the statutory maximum.²²⁵

65. We reject this argument. Neither section 503(b) nor the forfeiture guidelines in section 1.80 of the Commission’s rules speak to the application of the phrase “single act or failure to act,” or otherwise to the calculation of the number of violations, in the CPNI or data security context.²²⁶ Moreover, in calculating a proposed penalty under section 222, the Commission previously applied a methodology under which a systemic failure to protect customer information constituted significantly more than a single violation. In *TerraCom*, the Commission stated that “[e]ach document containing [proprietary information] that the Companies failed to protect constitutes a separate violation for which a forfeiture may be assessed.”²²⁷ The Commission further observed that “[e]ach unprotected document constitutes a continuing violation that occurred on each of the 81 days [until] the date that the Companies remedied the failure”²²⁸

66. The Commission in *TerraCom* elected to ground its forfeiture calculation in the number of unprotected documents (which it “conservatively estimate[d]” as more than 300,000),²²⁹ but that approach was not mandated under section 503, section 222, or the Commission’s rules. Similarly, in this case, the Commission reasonably exercised its authority to find that each unique relationship between Sprint and an LBS provider or aggregator represented a distinct failure to reasonably protect customer CPNI and therefore a separate violation of section 222 of the Act and section 64.2010 of the Commission’s rules. Each such relationship relied upon a distinct and unique contractual chain (from Sprint to the Aggregator, then from the Aggregator to the LBS provider) and was premised to involve a specific, individually-approved “Use Case” that had been reviewed and authorized by Sprint. Treating these separate channels for the disclosure of location information—each of which, although unique, suffered from the same fundamental vulnerabilities discussed in the *NAL* and above—as separate violations was thus rational and properly within the Commission’s discretion.

67. The approach taken in the *NAL* was not only reasonable, it was—contrary to Sprint’s claim that it exceeded the statutory maximum—eminently *conservative*. As described in the *NAL*, Sprint’s practices placed the sensitive location information of *all* of its customers at unreasonable risk of unauthorized disclosure. As such, the Commission could well have chosen to look to the total number of Sprint subscribers when determining the number of violations (and under that analysis, the violations presumably would have continued until the very last LBS provider’s access to customer location information was cut off).²³⁰ Using that methodology—and taking into account the tens of millions of

²²⁴ NAL Response at 25.

²²⁵ NAL Response at 26.

²²⁶ 47 U.S.C. § 503(b); 47 CFR § 1.80(b).

²²⁷ *TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325, 13343, para. 50 (2014).

²²⁸ *TerraCom*, 29 FCC Rcd at 13343, para. 50.

²²⁹ *TerraCom*, 29 FCC Rcd at 13343, para. 52. The Commission’s investigation into apparent violations of consumer privacy requirements in *TerraCom* was resolved by a consent decree in which the companies admitted to violating sections 201(b) and 222(a) of the Act. See *TerraCom, Inc. and YourTel America, Inc.*, Order and Consent Decree, 30 FCC Rcd 7075, 7084, para. 20 (EB 2015).

²³⁰ Although it involved a data breach—and not, as in this case, an ongoing failure to maintain reasonable safeguards such that customer data was placed at unreasonable risk of unauthorized disclosure—*TerraCom* supports applying a customer-centric forfeiture calculation that takes into account the number of customers whose data was inadequately protected. See *TerraCom*, 29 FCC Rcd at 13343, para. 50.

consumers whose highly sensitive location information was made vulnerable by Sprint—would have resulted in a significantly higher forfeiture than what was proposed in the *NAL*.

68. Furthermore, even under the framework applied in the *NAL*, the Commission could have calculated the proposed forfeiture based upon every single entity with access to Sprint customer location information up to the statutory maximum (\$204,892 per day up to \$2,048,915 for each and every LBS provider). That would have resulted in a far higher fine than the approach that was taken (applying a \$40,000 forfeiture for the first day of the violation and a \$2,500 forfeiture for each successive day the violation continued). Instead, the Commission took a conservative approach, giving Sprint a 30-day grace period with no fines assessed, limiting the number of continuing violations to every day that each related LBS provider operated in the apparent absence of reasonable measures to protect CPNI and therefore left Sprint customers' CPNI vulnerable to unlawful disclosure, and assessing a far lower fine per day for the continuing violations than it could have. This approach recognized the Commission's need to show that such violations are serious and ensured the proposed forfeiture amounts act as a powerful deterrent for future failures to reasonably protect CPNI.

69. We also reject any claim that Sprint's due process rights were violated because it lacked fair notice that its LBS practices would potentially make it liable for a penalty in excess of the \$2,048,915 statutory maximum for a single continuing violation. Consistent with our earlier discussion of Sprint's fair notice claims,²³¹ we find that this argument lacks merit. Customer location information is CPNI that is subject to protection under section 222 of the Act and section 64.2010 of the Commission's rules. Sprint knew, or should have known, that failing to reasonably protect CPNI carries with it significant potential penalties that may be associated with more than one violation. Indeed, the Commission has in the past proposed penalties for what could be viewed as a system-wide violation on a more granular basis that would yield higher penalties that would result from treating the violation as a single continuing violation.²³² Independently, we observe that the penalties at issue here are governed by section 503 of the Act, with which we fully comply in our decision.²³³ As the D.C. Circuit has recognized, where a statute specifies maximum penalties, the statute itself provides fair notice of all penalties within that limit.²³⁴

2. The Upward Adjustment is Permissible and Warranted

70. Sprint argues that the Commission failed to properly justify the 100% upward adjustment to the forfeiture amount proposed in the *NAL*. Sprint contends that certain upward adjustment factors cited in the *NAL*—the duration of the violation and the risk of harm it posed to consumers—were already considered in setting the base forfeiture amount and therefore constitute arbitrary double counting.²³⁵ Sprint also asserts that no upward adjustment is warranted because it did not engage in egregious or intentional misconduct or cause substantial harm to consumers.²³⁶

71. We reject these arguments and maintain the 100% upward adjustment proposed in the *NAL*. With regard to the upward adjustment, section 503 of the Act requires the Commission to “. . . take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³⁷ The plain language of the statute provides the Commission with broad discretion

²³¹ See *supra* III.B.

²³² See, e.g., *TerraCom*, 29 FCC Rcd at 13343, paras. 51-52.

²³³ 47 U.S.C. § 503.

²³⁴ *Pharon v. Bd. of Gov. of the Fed. Reserve*, 135 F.3d 148, 157 (D.C. Cir. 1998) (applying *BMW of North Am. v. Gore*, 517 U.S. 559 (1996), to a penalty assessed by the Board and concluding that the relevant statutory maximum penalty provisions provided adequate notice).

²³⁵ *NAL* Response at 26.

²³⁶ *NAL* Response at 26-29.

²³⁷ 47 U.S.C. § 503(b).

to assess proposed penalties based on the statutory factors, up to the statutory maximum. Moreover, section 1.80 of the Commission's rules provides a list of possible factors the Commission may use when making a determination to adjust upward or adjust downward the base forfeiture.²³⁸ These factors include, importantly, "egregious misconduct," "substantial harm," "repeated or continuous violation," and "ability to pay/relative disincentive," among others.²³⁹

72. The Commission weighed these factors when making the determination that the base forfeiture in this case merited a substantial upward adjustment. Sprint's conduct was egregious; the *NAL* detailed how Sprint apparently did not review third-party proposals for using its customer location information, did not review customer consent records, and did not exercise its right to audit the Aggregators.²⁴⁰ Further, revelations in the press about Securus' hidden location information program led to a public outcry and prompted inquiries from members of Congress concerned about carriers' apparent lack of control over highly sensitive location information.²⁴¹ Its failure to adequately protect CPNI for a protracted amount of time caused substantial harm by making it possible for "malicious persons to identify the exact locations of Sprint subscribers who belong to law enforcement, military, government, or other highly sensitive positions—thereby threatening national security and public safety"—a threat illustrated by reports that Hutcheson used location information to obtain the precise location of multiple Missouri State Highway Patrol officers on numerous occasions.²⁴² The violations were continuous over an extended period of time and repeated with two Aggregators and multiple LBS providers. Finally, the Commission took into account Sprint's status as a major telecommunications provider to determine what penalty, when applied, would adequately provide Sprint with the necessary disincentive to engage in similar conduct again in the future. These considerations, taken into account as the Commission lawfully exercised its statutory authority to weigh the relevant factors, justify the resulting upward adjustment. Sprint's arguments to the contrary do not defeat Congress's decision to grant the Commission the power to weigh the factors and make such adjustments "as justice may require."²⁴³ Nor do Sprint's arguments persuade us that the 100% upward adjustment, which is in line with upward adjustments in other cases involving consumer harms,²⁴⁴ was unwarranted.

²³⁸ 47 CFR § 1.80(b)(10), Table 3.

²³⁹ *Id.*

²⁴⁰ *NAL*, 35 FCC Rcd at 1683-84, para. 84.

²⁴¹ See e.g., Letter from Sen. Ronald L. Wyden, Senator, U.S. Senate, et al., to Joseph J. Simons, Chairman, Federal Trade Commission, and Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2019) (on file in EB-TCD-18-00027704) (this letter was signed by 15 United States senators); Letter from Rep. Frank J. Pallone, Jr., Chairman, U.S. House of Representatives Committee on Energy and Commerce, to Ajit Pai, Chairman, Federal Communications Commission (Jan. 11, 2019) (on file in EB-TCD-18-00027704); Maria Dinzeo, *Class Claims AT&T Sold Their Real-Time Locations to Bounty Hunters*, Courthouse News Service (July 16, 2019), <https://www.courthousenews.com/class-claims-att-sold-their-real-time-locations-to-bounty-hunters/>; Brian Barrett, *A Location-Sharing Disaster Shows How Exposed You Really Are*, Wired (May 19, 2018), <https://www.wired.com/story/locationsmart-securus-location-data-privacy/>; Press Release, New America's Open Technology Institute, *Privacy Advocates Call on FCC to Hold Wireless Carriers Accountable for Selling Customer Location Information to Third Parties Without Consent* (June 14, 2019), <https://www.newamerica.org/oti/press-releases/privacy-advocates-call-fcc-hold-wireless-carriers-accountable-selling-customer-location-information-third-parties-without-consent/> (announcing that New America's Open Technology Institute, the Center on Privacy & Technology at Georgetown Law, and Free Press had filed a complaint with the FCC regarding the sale and disclosure of customer location information by Sprint, AT&T, T-Mobile, and Verizon).

²⁴² *NAL*, 35 FCC Rcd at 1684, para. 85.

²⁴³ 47 U.S.C. § 503(b).

²⁴⁴ See, e.g., *Scott Rhodes*, Forfeiture Order, 36 FCC Rcd 705, 728, para. 54 (2021) (upward adjustment equaling 100% of base forfeiture amount on robocaller/spoofers who made targeted robocalls designed to harass victims); *John C. Spiller, et al.*, Forfeiture Order, 36 FCC Rcd 6225, 6257, para. 59 (2021) (upward adjustment equaling 50% (continued....))

73. We reject Sprint's supplemental constitutional objections that: (1) the FCC combines investigatory, prosecutorial, and adjudicative roles in violation of constitutional due process and separation of powers requirements;²⁴⁵ (2) the issuance of a forfeiture order by the Commission would violate Article III and the Seventh Amendment;²⁴⁶ and (3) the Commission's ability to choose a procedural approach to enforcement under section 503(b) of the Act is an unconstitutional delegation of legislative power.²⁴⁷ Sprint's arguments are premised on misunderstandings regarding the relevant statutory framework, the nature of the Commission's actions, and relevant precedent.

75. Independently, there are sufficient grounds to reject Sprint's arguments for other reasons, as well. We discuss each of these in turn below.

of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4671, para. 25, 4674, para. 33 (2018) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities).

²⁴⁷ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3-4.

²⁴⁹ See, e.g., *Concrete Pipe & Prods. of Cal. v. Construction Lab. Pension Trust for S. Cal.*, 508 U.S. 602, 618 (1993) (“Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator to ‘conduct a *de novo* review of all factual and legal issues.’”).

²⁵⁰ Cf. *Executive Benefits Insurance Agency v. Arkinson*, 573 U.S. 25, 38-40 (2014) (where a claim raised before a bankruptcy court implicates the judicial power under Article III of the constitution, the bankruptcy court can make proposed findings of fact and conclusions of law for *de novo* review by a federal district court, and even if a bankruptcy court adjudicates such a claim itself, *de novo* review of that decision by a federal district court resolved any Article III concern); *Crowell v. Benson*, 285 U.S. 22, 50-65 (1932) (even in the case of private rights, an agency can make factual findings and render an initial decision of law subject to *de novo* review of issues of jurisdictional fact and of law in an Article III court).

251 T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2-3. Sprint contends that the combination of functions in the FCC “violates due process and the separation of powers under the circumstances presented in this case,” T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2, but does not develop the separation of powers argument or explain why the combination of functions in the Commission violates existing separation of powers. (continued....)

Commission's enforcement process here renders it constitutionally suspect, even apart from Sprint's failure to account for the trial *de novo* under section 504 of the Act. It is true that "a 'fair trial in a fair tribunal is a basic requirement of due process,'" but objections in that regard premised on the combination of functions in an agency "must overcome a presumption of honesty and integrity in those serving as adjudicators."²⁵² To overcome that presumption requires "a showing of conflict of interest or some other specific reason for disqualification."²⁵³

77. Sprint fails to demonstrate a concern specific to the Commission's forfeiture order here sufficient to overcome the presumption of honesty and integrity. Insofar as Sprint notes the existence of pending due process claims premised on the combination of functions involving another agency, we are not persuaded to treat those still-pending unadjudicated arguments as warranting the conclusion that there is a genuine due process concern here.²⁵⁴

78. Sprint also expresses concern that "the Commission performed its own investigations of alleged violations of the Communications Act (based on newspaper articles), prosecuted them by issuing NALs, and plans to resolve any challenges to these NALs itself by imposing forfeitures directly."²⁵⁵ But these broad-brush objections do not identify specific reasons that a reasonable adjudicator in the Commission's position would be biased in this proceeding—certainly not one sufficient to overcome the background presumption of honesty and integrity on the part of agency adjudicators. To the contrary, finding a due process violation based simply on those concerns would, in large part, turn that background presumption on its head by a requiring a presumption of bias whenever the Commission issued an NAL. Such an understanding would be at odds with the range of scenarios where courts have found no due process concerns with adjudication by individuals despite earlier involvement in a matter.²⁵⁶

powers precedent. Consequently, we do not find that a basis to alter our approach in this forfeiture order, and instead focus on those arguments that Sprint does develop.

²⁵² *Withrow v. Larkin*, 421 U.S. 35, 46, 47 (1975); see also, e.g., *id.* at 47-48 (discussing *FTC v. Cement Institute*, 333 U.S. 683 (1948), where the Court found no due process violation based on the adjudicators' prior investigations, including stated opinions about the legality of certain pricing systems, because "[t]he fact that the Commission had entertained such views as the result of its prior ex parte investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of the respondents' basing point practice" and in the adjudication at issue "members of the cement industry were legally authorized participants in the hearings" and submit evidence and arguments in defense of their positions); *In re Zdravkovich*, 634 F.3d 574, 579 (D.C. Cir. 2011) ("In *Withrow v. Larkin*, the Supreme Court expressly rejected the claim that due process is violated where '[t]he initial charge or determination of probable cause and the ultimate adjudication' are made by the same agency."); *Ethicon Endo-Surgery v. Covidien*, 812 F.3d 1023, 1029-30 (Fed. Cir. 2016) (observing that "[l]ower courts have also rejected due process challenges to systems of adjudication combining functions in an agency," and collecting illustrative cases).

To the extent that Sprint argues that the Supreme Court's decision in "*Withrow* is ripe for overruling," T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3, doing so would be a matter for the Supreme Court itself, and we are not persuaded to chart a different approach on our own.

²⁵³ *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); see also, e.g., *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 881 (2009) (the due process inquiry is "whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'").

²⁵⁴ See T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing the pending constitutional challenge involving the FTC underlying *Axon Enterprise v. FTC*, 143 S. Ct. 890 (2023)).

²⁵⁵ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

²⁵⁶ For example, the Supreme Court in *Withrow v. Larkin* observed that "judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact," and "the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court," noting also that "a hearing examiner who has recommended findings of fact after rejecting certain evidence as not being probative was not disqualified to preside at further hearings that were required when reviewing courts held that the evidence had been erroneously excluded." *Withrow v. Larkin*, 421 U.S. at 48-49 (internal quotation (continued....))

79. Nor do the “[s]pecial facts and circumstances” that Sprint alleges are present persuade us that due process concerns are present here.²⁵⁷ Sprint criticizes the magnitude of the proposed forfeiture and the methodology used to calculate them as reflecting a “break from precedent and policy,” that “reflects animosity toward the parties and an unwillingness to neutrally consider the legal and factual arguments that [Sprint] raised.”²⁵⁸ The potential to adopt forfeitures—even substantial forfeitures—that would be paid into the U.S. Treasury does not create a risk of financial bias on the part of reasonable adjudicators in the Commission’s position.²⁵⁹ We also are not persuaded that the Commission’s decision to issue an NAL proposing even a significant forfeiture is likely to create the risk of bias in the Commission’s subsequent decision regarding a forfeiture order. Although the Supreme Court has stated in the context of criminal prosecutions that “there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case,” we find even a significant proposed forfeiture materially distinguishable from the imposition of criminal penalties—particularly the death penalty.²⁶⁰ For example, we are not persuaded that the Commission’s decision to propose a forfeiture in an NAL creates the same degree of risk of an adjudicator becoming “psychologically wedded” to that proposal as in the case of a prosecutor’s decision to authorize prosecutors to seek the death penalty, nor does Sprint provide evidence that is the case here.²⁶¹ We also do not find that the NAL-initiated enforcement process presents the risk of adjudicators acting on the basis of extra-record information or impressions of the respondent that the Court found of concern in the case of a criminal prosecutor then serving as a judge.²⁶² In particular, section 503(b) requires a Commission NAL to “set forth the nature of the act or omission charged . . . and the facts upon which such charge is based,”²⁶³ and Sprint has not identified concerns about the decision here being premised on extra-record evidence obtained by the Commission or commissioners in the development of the NAL.

marks omitted). The Court’s willingness to accept continued adjudicator participation even where final—not merely preliminary—decisions previously had been made by the adjudicators strongly supports our analysis here.

²⁵⁷ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

²⁵⁸ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

²⁵⁹ See, e.g., *Ward v. Village of Monroeville*, 409 U.S. 57, 59-61 (1972) (“[T]he test is whether the [decisionmaker’s] situation is one ‘which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . . ,’” and due process was violated where a mayor acted as an adjudicator and also obtained a portion of the fees and costs he imposed in that role, whereas due process was not violated where a mayor acted as an adjudicator but “the Mayor’s relationship to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.”); *Brucker v. City of Doraville*, 38 F.4th 876, 884 (11th Cir. 2022) (“The fact that a judge works for a government, which gets a significant portion of its revenues from fines and fees, is not enough to establish an unconstitutional risk of bias on the part of the judge.”).

²⁶⁰ *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (finding a due process violation where the judge previously had been involved as a prosecutor in authorizing the prosecution to seek the death penalty).

²⁶¹ See *Williams v. Pennsylvania*, 579 U.S. at 9 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty).

²⁶² See *Williams v. Pennsylvania*, 579 U.S. at 9-10 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty and also citing *In re Murchison*, 349 U.S. 133, 138 (1955), which involved an individual acting in the role of both a grand jury and judge where similar concerns arose); see also, e.g., *Withrow v. Larkin*, 421 U.S. at 54 (explaining that “Murchison has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications”).

²⁶³ 47 U.S.C. § 503(b)(4).

80. Instead, the “[s]pecial facts and circumstances” raised by Sprint amount to little more than differences of opinion regarding legal interpretations or the gravity of the violations.²⁶⁴ We are not persuaded that such differences of opinion—which can arise in virtually every Commission enforcement action—inherently provide any reason to question the Commission’s neutrality as an adjudicator. The main thrust of Sprint’s argument seems to be that “the penalties would be among the largest in the Commission’s history and impose penalty amounts typically reserved for fraud or deliberate misconduct” in what Sprint characterizes as a “break from precedent and policy.”²⁶⁵ But Sprint provides no basis to expect that only fraud or deliberate misconduct can justify penalties of the magnitude at issue here, and we already have explained our rationale for both the methodology for calculating the forfeiture and its ultimate magnitude.²⁶⁶ Both the Communications Act and Commission rules direct the agency, when deciding on a forfeiture amount, to “take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,” and that is precisely what the Commission did here.²⁶⁷ It is not surprising that the private company that potentially will be subject to a forfeiture might assess the nature and gravity of its violations differently than the Commission, but those differing views are not grounds for finding a likelihood of bias on the part of the Commission. We thus reject Sprint’s claims of a due process violation through our implementation of the section 503(b) NAL-based process here.

81. *Trial By Jury.* We also reject Sprint’s contention that adjudication of the violations at issue here may not constitutionally be assigned to a federal agency.²⁶⁸ The Seventh Amendment preserves “the right of trial by jury” in “[s]uits at common law, where the value in controversy shall exceed twenty dollars,”²⁶⁹ but the Seventh Amendment applies only to suits litigated in Article III courts, not to administrative adjudications conducted by federal agencies.²⁷⁰ In determining whether an adjudication involves an exercise of judicial power vested in the federal courts under Article III of the constitution, the Supreme Court has distinguished between “public rights” and “private rights.”²⁷¹ Congress has broad authority to “assign adjudication of public rights to entities other than Article III courts.”²⁷² Examples of “public rights” litigation involving “cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact” include enforcement of federal workplace safety requirements,²⁷³ “adjudicating violations of the customs and immigration laws and assessing penalties based thereon,”²⁷⁴ adjudicating “whether an unfair labor practice had been committed and of ordering backpay where appropriate,”²⁷⁵ and the grant or reconsideration of a grant of a patent.²⁷⁶ That precedent confirms the constitutionality validity of FCC

²⁶⁴ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

²⁶⁵ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

²⁶⁶ See *supra* Section III.D.

²⁶⁷ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

²⁶⁸ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2.

²⁶⁹ U.S. Const. amend. VII.

²⁷⁰ See, e.g., *Oil States Energy Services v. Greene’s Energy Group*, 138 S. Ct. 1365, 1379 (2018); *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442, 455 (1977).

²⁷¹ *Oil States*, 138 S. Ct. at 1373 (citation omitted).

²⁷² *Id.*

²⁷³ *Atlas Roofing*, 430 U.S. at 450, 461

²⁷⁴ *Id.* at 451.

²⁷⁵ *Id.* at 453.

²⁷⁶ *Oil States*, 138 S. Ct. at 1373.

adjudication of violations of the Communications Act, even setting aside the reality that Sprint does, in fact, have the right of a trial *de novo* under section 504 of the Act here. Through section 222 of the Communications Act, Congress “created new statutory obligations”²⁷⁷ designed to protect consumer privacy even as the communications marketplace became more open to competition,²⁷⁸ analogous to those previously identified as involving public rights. Congress further “provided for civil penalties” for violations of those obligations, and constitutionally could entrust to the Commission “the function of deciding whether a violation has in fact occurred” when deciding whether to issue a forfeiture order, bringing it well within the “public rights” framework of existing Supreme Court precedent.²⁷⁹

82. Relying principally on the Supreme Court’s decision in *Tull v. United States* and the Fifth Circuit’s decision in *Jarkesy*, Sprint contends that the forfeiture at issue here should fall within the “private rights” framework—requiring adjudication in an Article III court, with the right to a trial by jury—because the violations allegedly are analogous to a common law action in debt.²⁸⁰ In *Tull*, the government was pursuing a claim in federal district court seeking penalties and an injunction under the Clean Water Act and the district court had denied the defendant’s request for a jury trial.²⁸¹ But as the Supreme Court also has made clear, Congress can assign matters involving public rights to adjudication by an administrative agency “even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead.”²⁸² Thus, *Tull* does not address the question of whether Congress can assign the adjudication of a given matter to an administrative agency—it speaks only to the Seventh Amendment implications of a matter that is assigned to an Article III court. To the extent that the Fifth Circuit in *Jarkesy* treated *Tull* as standing for the proposition that causes of action analogous to common-law claims would, as a general matter, need to be adjudicated in Article III courts with a right to trial by jury, we are unpersuaded.²⁸³ As the Supreme Court has held in a post-*Tull* decision, “Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their resolution to a

²⁷⁷ *Atlas Roofing*, 430 U.S. at 450.

²⁷⁸ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8064, para 1 (1998) (“Congress recognized, . . . that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.”).

²⁷⁹ *Atlas Roofing*, 430 U.S. at 450.

²⁸⁰ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing *Tull v. United States*, 481 U.S. 412 (1987) and *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022)). Sprint also cites Justice Thomas’ concurrence in *Axon. Id.* (citing *Axon*, 143 S. Ct. at 911 (Thomas, J., concurring)). However, as relevant here, Justice Thomas was critiquing existing Supreme Court precedent insofar as it had allowed agency adjudication subject to only deferential appellate court review. *Axon*, 143 S. Ct. at 906-09 (Thomas, J., concurring). We are not persuaded to alter our analysis based on one Justice’s non-controlling opinion, and we therefore continue to apply existing Supreme Court precedent as it bears on our analysis here.

²⁸¹ *Tull*, 481 U.S. at 414-15.

²⁸² *Atlas Roofing*, 430 U.S. at 455.

²⁸³ Sprint also cites *Burgess v. FDIC*, but in pertinent part that district court decision simply applied the binding circuit precedent of *Jarkesy*. T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing *Burgess v. FDIC*, 2022 WL 17173893, at *10-11 (N.D. Tex. Nov. 6, 2022)).

forum in which jury trials are unavailable.”²⁸⁴ We thus are unpersuaded by Sprint’s reliance on *Tull* and *Jarkesy*.²⁸⁵

83. *Nondelegation*. Finally, contrary to Sprint’s contention,²⁸⁶ the choice of enforcement processes in section 503(b) of the Act does not constitute an unconstitutional delegation of legislative power. Section 503(b)(3) and (4) of the Act gives the Commission a choice of two procedural paths when pursuing forfeitures: either the NAL-based path most commonly employed by the Commission—which we have used here—or a formal adjudication in accordance with section 554 of the Administrative Procedure Act before the Commission or an administrative law judge.²⁸⁷ Contrary to Sprint’s suggestion, this choice involves the exercise not of legislative power but of executive power. The choice of enforcement process reflected in section 503(b) does not require the Commission to establish general rules governing private conduct of the sort that might implicate potential concerns about unauthorized lawmaking, but instead involves the exercise of enforcement discretion that is a classic executive power.²⁸⁸

84. We also are unpersuaded by Sprint’s reliance on the Fifth Circuit decision in *Jarkesy* to support its nondelegation concerns. In addition to questions about the merits of the Fifth Circuit’s approach in that regard,²⁸⁹ even on its own terms, *Jarkesy* involved a scenario where the court found that “Congress offered *no guidance* whatsoever” regarding the statutory decision at issue.²⁹⁰ That is not the case here, however. Although section 503(b) alone does not expressly provide guidance regarding the choice of enforcement process, section 4(j) of the Act directs as a general matter that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to

²⁸⁴ *Granfinanciera v. Nordberg*, 492 U.S. 33, 52 (1989) (emphasis omitted). We also are unpersuaded by the Fifth Circuit’s decision in *Jarkesy* insofar as it interpreted *Granfinanciera* as establishing an additional prerequisite for a public right—namely, “when Congress passes a statute under its constitutional authority that creates a right so closely integrated with a comprehensive regulatory scheme that the right is appropriate for agency resolution.” *Jarkesy*, 34 F.4th at 453. But *Granfinanciera* involved a dispute between two private parties, rather than an enforcement action commenced by the government. *Granfinanciera*, 492 U.S. at 51. The *Granfinanciera* Court explained that it had previously applied the public-rights doctrine to sustain “administrative factfinding” in cases “where the Government is involved in its sovereign capacity,” but the Court distinguished such cases from “[w]holly private” disputes. *Id.* (citation omitted). It was in the context of private disputes—*i.e.*, “in cases not involving the Federal Government”—where the Court considered whether Congress “has created a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution.” *Granfinanciera*, 492 U.S. at 54. The Fifth Circuit in *Jarkesy* thus took that holding out of context when it applied it to claims where (as here) the government is involved in its sovereign capacity.

²⁸⁵ The government has petitioned for certiorari in the *Jarkesy* case. Petition for a Writ of Certiorari, SEC v. *Jarkesy*, No. 22-859 (filed Mar. 8, 2023).

²⁸⁶ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3-4.

²⁸⁷ 47 U.S.C. § 503(b)(3), (4).

²⁸⁸ See, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) (“[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch.”); cf. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (noting that a federal prosecutor’s decision not to indict a particular defendant “has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to ‘take Care that the Laws be faithfully executed’”) (citation omitted); *United States v. Batchelder*, 442 U.S. 114, 121, 124, 126 (1979) (no violation of the nondelegation doctrine when Congress enacted two criminal statutes with “different penalties for essentially the same conduct” and gave prosecutors “discretion to choose between” the two statutes given that Congress had “informed the courts, prosecutors, and defendants of the permissible punishment alternatives available under each [statute],” and thereby “fulfilled its duty”).

²⁸⁹ As discussed above, Supreme Court precedent supports our contrary analysis here, and as previously noted, the government has petitioned for certiorari in the *Jarkesy* case. See *supra* note 285.

²⁹⁰ *Jarkesy*, 34 F.4th at 462.

the ends of justice.”²⁹¹ Nothing in section 503(b) precludes the applicability of these considerations to guide the Commission’s choice of enforcement process there, and the Commission has interpreted section 4(j) as informing its decision regarding the procedural protections required in adjudicatory proceedings in other contexts in the past.²⁹² The circumstances here therefore are distinct from those in *Jarkesy* where “Congress offered *no guidance* whatsoever.”²⁹³

IV. CONCLUSION

85. Based on the record before us and in light of the applicable statutory factors, we conclude that Sprint willfully and repeatedly violated section 222 of the Act²⁹⁴ as well as section 64.2010 of the Commission’s rules²⁹⁵ by disclosing its customers’ location information, without their consent, to a third party who was not authorized to receive it and for failing to take reasonable steps to protect its customers’ location information. We decline to withdraw the Admonishment or to cancel or reduce the \$12,240,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

86. 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, Sprint Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve million, two-hundred and forty thousand dollars (\$12,240,000) for willfully and repeatedly violating section 222 of the Act and section 64.2010 of the Commission’s rules.

87. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁹⁶ Sprint Corporation shall send electronic notification of payment to Shana Yates, Kimbarly Taylor, and Michael Epshteyn, Enforcement Bureau, Federal Communications Commission, at shana.yates@fcc.gov, kimbarly.taylor@fcc.gov, and michael.epshteyn@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.²⁹⁷

88. In order for Sprint Corporation to pay the proposed forfeiture, Sprint Corporation shall notify Shana Yates at Shana.Yates@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁹⁸

²⁹¹ 47 U.S.C. § 154(j).

²⁹² See, e.g., *Procedural Streamlining of Administrative Hearings*, EB Docket No. 19-214, Report and Order, 35 FCC Rcd 10729, 10734, para. 14 (2020) (looking to the standards in section 4(j) to guide the decision regarding the conduct of adjudicatory proceedings on the basis of a written record without live testimony); *id.* at 10735-36, para. 18 (looking to the standards in section 4(j) to guide the decision regarding whether an adjudication should be heard by the Commission, one or more commissioners, or an ALJ).

²⁹³ *Jarkesy*, 34 F.4th at 462.

²⁹⁴ 47 U.S.C. § 222.

²⁹⁵ 47 CFR § 64.2010.

²⁹⁶ *Id.*

²⁹⁷ 47 U.S.C. § 504(a).

²⁹⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

- 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 159²⁹⁹ or printed CORES form³⁰⁰ 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).³⁰¹ 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 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.

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

²⁹⁹ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³⁰⁰ 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>.

³⁰¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

90. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Edward H. Smith, Senior Vice President of Public Policy and Government Affairs, and Christopher Koegel, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., 601 Pennsylvania Ave., N.W., Suite 800, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Sprint Corporation*, Forfeiture Order, File No.: EB-TCD-18-00027700 (April 17, 2024)

Our smartphones are always with us, and as a result these devices know where we are at any given moment. This geolocation data is especially sensitive. It is a reflection of who we are and where we go. In the wrong hands, it can provide those who wish to do us harm the ability to locate us with pinpoint accuracy. That is exactly what happened when news reports revealed that the largest wireless carriers in the country were selling our real-time location information to data aggregators, allowing this highly sensitive data to wind up in the hands of bail-bond companies, bounty hunters, and other shady actors. This ugly practice violates the law—specifically Section 222 of the Communications Act, which protects the privacy of consumer data. The Commission has long recognized the importance of ensuring that information about who we call and where we go is not for sale. In fact, these enforcement actions—leading to \$200 million in fines—were first proposed by the last Administration. By following through with this order, we once again make clear that wireless carriers have a duty to keep our geolocation information private and secure.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Sprint Corporation*, Forfeiture Order, File No.: EB-TCD-18-00027700 (April 17, 2024)

For more than a decade, location-based service (LBS) providers have offered valuable services to consumers, like emergency medical response and roadside assistance. Up until the initiation of the above-captioned enforcement actions, LBS providers did so by obtaining access to certain location information from mobile wireless carriers like AT&T, Verizon, and T-Mobile. Then, in 2018, a news report revealed that a local sheriff had misused access to an LBS provider's services. That sheriff was rightly prosecuted for his unlawful actions and served jail time. Subsequently, all of the participating carriers ended their LBS programs. So our decision today does not address any ongoing practice.

This is not to say that LBS providers have ended their operations. They have simply shifted to obtaining this same type of location information from other types of entities. That is why I encouraged my FCC colleagues to examine ways that we could use these proceedings to address that ongoing practice. But my view did not prevail.

That brings us to the final Forfeiture Orders that the FCC approves today. Back in 2020, after the mobile wireless carriers exited the LBS line of business, the FCC unanimously voted to approve Notices of Apparent Liability (NALs) against the carriers. Even then, it was clear that at least one LBS provider had acted improperly. So I voted for the NALs so we could investigate the facts and determine whether or not the carriers had violated any provisions of the Communications Act.

Now that the investigations are complete, I cannot support today's Orders. This is not to say that the carriers' past conduct should escape scrutiny by a federal agency. Rather, given the nature of the services at issue, the Federal Trade Commission, not the FCC, would have been the right entity to take a final enforcement action, to the extent the FTC determined that one was warranted.

Here's why. Unlike the FTC, Congress has provided the FCC with both limited and circumscribed authority over privacy. Congress delineated the narrow contours of our authority in section 222 of the Communications Act. The services at issue in these cases plainly fall outside the scope of the FCC's section 222 authority. Indeed, today's FCC Orders rest on a newfound definition of customer proprietary network information (CPNI) that finds no support in the Communications Act or FCC precedent. And without providing advance notice of the new legal duties expected of carriers (to the extent we could adopt those new duties at all), the FCC retroactively announces eye-popping forfeitures totaling nearly \$200,000,000. These actions are inconsistent with the law and basic fairness. The FCC has reached beyond its authority in these cases.

According to the Orders, our CPNI rules now apply whenever a carrier handles a customer's location information—whether or not it relates to the customer's use of a “telecommunications service” under Title II of the Communications Act. Here, the location information was unrelated to a Title II service. The customer did not need to make a call to convey his or her location. In fact, the carrier could have obtained the customer's location even if the customer had a data-only plan for tablets. Yet the Order concludes that the carriers mishandled CPNI.

That cannot be right. Start with the definition of CPNI, which section 222 of the Communications Act defines as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a

telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.¹

That definition has two key limitations. First, the information must be of a specific type. As relevant here, CPNI must “relate to” the “location ... of use of a telecommunications service.” Second, the information must have been obtained in a specific way. The customer must have made his or her location “available to carrier” and “solely by virtue of the carrier-customer relationship.”

Take the first limitation. By requiring that the location “relate” to the “use of a telecommunications service,” the statute covers a particular type of data known as “call location information”—namely, the customer’s location *while making or receiving a voice call*. Section 222 confirms this commonsense reading elsewhere when it expressly refers to “call location information.”² These statutory references to “call location information” would make no sense if Congress intended for CPNI to cover all location information collected by a carrier, irrespective of particular calls.

The FCC confirmed that “straightforward” interpretation in a 2013 Declaratory Ruling.³ The definition of CPNI, this agency held, encompassed “telephone numbers of calls dialed and received and the location of the device at the time of the calls.”⁴ The FCC also clarified that CPNI included “the location, date, and time a handset experiences a network event, such as a dialed or received telephone call [or] a dropped call.”⁵

Although the Orders claim CPNI was at play, they do not contend that “call location information” was disclosed. Nor could they. As the Orders concede, the carriers obtained their customers’ location whenever a customer’s device pinged the carrier’s cell site, even when the device was otherwise idle. No voice call was necessary for the carrier to obtain the customer’s location. In fact, the carrier could gather the customer’s location even if the customer did not have a voice plan. So, the “location” did not “relate to” the “use” of a “telecommunications service” in any meaningful sense.

Turning to the second limitation, it seems implausible to conclude that the carrier obtained the customer’s location “*solely* by virtue of the carrier-customer relationship,” as section 222 requires. True, many of these customers might have had voice plans, thereby creating a “carrier-customer relationship.” But any Title II relationship was, at most, coincidental. The carrier could have obtained the customer’s location even in the absence of a call, and even in the absence of a voice plan.

The massive forfeitures imposed in these Orders offend basic principles of fair notice. The FCC has never held that location information other than “call location information” constitutes CPNI. Nor has the FCC stated that a carrier might be liable under our CPNI rules for location information unrelated to a Title II service and collected outside the Title II relationship. So, even if we could proscribe the conduct at issue here through a rulemaking (and I am dubious that we could), it would be inappropriate and unlawful to impose the retroactive liability that these Orders do.

¹ 47 U.S.C. § 222(h)(1)(A).

² 47 U.S.C. § 222(f)(1) (ordinarily requiring “express prior authorization of the customer” for carrier disclosure of “call location information”); 47 U.S.C. § 222(d)(4) (allowing, however, carrier disclosure of “call location information” in certain emergency situations).

³ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Rcd 9609, para. 22 (2013).

⁴ *Id.* at para. 22.

⁵ *Id.* at para. 25.

In the end, these matters should have been handled by the FTC. Our CPNI rules are narrow and do not cover every piece of data collected by an FCC-regulated entity. Besides, as the Communications Act makes clear, carriers are regulated under Title II only when they are engaged in offering Title II services.⁶ In situations where an FCC-regulated entity offers a Title I service, such as mobile broadband, the FTC is the proper agency to enforce privacy and data security practices under generally applicable rules of the road. I respectfully dissent.

⁶ 47 U.S.C. § 153(51) (“A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services ...”); *see also* *FTC v. AT&T Mobility LLC*, 883 F. 3d 848, 863-64 (9th Cir. 2018) (holding that the FTC’s “common carrier” exemption to Section 5 of the FTC Act “bars the FTC from regulating ‘common carriers’ only to the extent that they engage in common-carriage activity”).

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Sprint Corporation*, Forfeiture Order, File No.: EB-TCD-18-00027700 (April 17, 2024)

Today, each of the major national mobile network operators faces a forfeiture for its purported failure to secure the confidentiality of its customer proprietary network information ('CPNI') as it relates to location information of network user devices. While the facts of each alleged violation are somewhat different, the enforcement calculation methodology used to arrive at the forfeitures is shared. Because I am concerned principally with that issue, together with what I view as a significant and undesirable policy upshot common across the actions that the Commission takes today, I will draft one dissent.

There is no valid basis for the arbitrary and capricious finding—enunciated in the Commission's erroneous rationale in *TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014) ('*TerraCom*') and relied upon today—that a single, systemic failure to follow the Commission's rules (in that case, violations of sections 201(b) and 222(a) of the Act; here, a violation of section 64.2010 of the Rules) may constitute however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology. In *TerraCom*—which was resolved by consent decree and never proceeded to a forfeiture order—the Commission found that each customer record exposed by a single insecure data protection method (some 305,065 records) could be treated as having formed a separate and continuing violation. Here, the Commission purports to count individual location-based services providers ('LBS') and aggregators relied upon by each mobile network operator to arrive at its separate and distinct continuing violations.

Whether counting individual exposed customer records or LBS providers and aggregators, the clear effect of the Commission's arbitrary selection of a violation class used to increase the number violations emerging from a single act or failure to act of a regulatee alleged to be in violation of our rules is to exceed our section 503 statutory authority. Here it cannot credibly be argued that any of the mobile network operators, in operating an LBS/aggregator program, committed more than one act relevant for the purposes of forfeiture calculation. It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an "act" into its individual constituent parts, counting the members of whatever class of objects may be related to the alleged violation to arrive at whatever forfeiture amount suits a preordained outcome. In this case we exceed our statutory maximum forfeiture by a factor of, in some cases, dozens; in *TerraCom*, we asserted the right to exceed it by thousands.

What's more, the Commission ought to act prudentially here: even assuming, purely *arguendo*, that location-based CPNI were illicitly exposed, let us not forget that, at every moment, any of thousands of unregulated apps may pull GPS location information, Wi-Fi and Bluetooth signal strength, and other fragments of data indicating location from customer handsets at every moment the device is on. Indeed, this can be, and routinely is, accomplished even without consumer permission. By sending a strong market signal that any alleged violation of Commission rules regarding CPNI safekeeping (whether or not the rules actually were violated) can and will result in an outsize fine, we have effectively choked off one of the only ways that valid and legal users of consent-based location data services had to access location data for which legal safeguards and oversight actually exist.

It was available for the Commission to work with the carriers to issue consent decrees to promote best practices to develop further safeguards around location-based and aggregation services, and to actively monitor ongoing compliance in an effort to vouchsafe a regulated means of consensually sharing handset location data with legitimate users of the same. We opt, instead, to appear "tough on crime" in a

way that actually reduces consumer data privacy by pushing legitimate users of location data toward unregulated data brokerage. Accordingly, I dissent.

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

In the Matter of	)	
	)	
T-Mobile USA, Inc.	)	File No.: EB-TCD-18-00027702
	)	NAL/Acct. No.: 202032170003
	)	FRN: 0006945950

FORFEITURE ORDER

Adopted: April 17, 2024

Released: April 29, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
A. Legal Background	2
B. Factual Background	8
III. DISCUSSION	21
A. Location Information is CPNI	22
B. T-Mobile Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act	33
C. T-Mobile Failed to Take Reasonable Steps to Protect CPNI	41
1. T-Mobile’s Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222	42
2. T-Mobile’s Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures	45
3. T-Mobile Bore the Burden of Production	67
D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent	74
1. The Commission Reasonably Found that T-Mobile Engaged in 81 Continuing Violations	77
2. The Forfeiture is not Excessive, Disproportionate, or Unconstitutional	83
3. The Forfeiture Comports with the Commission’s <i>Forfeiture Policy Statement</i>	88
4. The Upward Adjustment is Permissible and Warranted	90
5. The Commission Will Reduce the Forfeiture Amount by \$11,550,000	93
E. Section 503(b) Is Employed Here Consistent With the Constitution	96
IV. CONCLUSION	108
V. ORDERING CLAUSES	109

I. INTRODUCTION

1. On February 28, 2020, the Commission issued a Notice of Apparent Liability for Forfeiture and Admonishment (*NAL*) against T-Mobile USA, Inc. (T-Mobile or Company).¹ In the *NAL*, the Commission admonished T-Mobile for apparently disclosing its customers’ location information, without their consent, to a third party who was not authorized to receive it, and proposed to fine T-Mobile \$91,630,000 for failing to take reasonable steps to protect its customers’ location information. After

¹ *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1785 (2020) (*NAL*).

reviewing the Company's response to the *NAL*,² we find no reason to cancel or withdraw the proposed penalty. However, pursuant to additional factual evidence provided in T-Mobile's *NAL* Response relevant to the forfeiture calculation, we reduce the proposed penalty by \$11,550,000, and therefore impose a penalty of \$80,080,000 against T-Mobile.

II. BACKGROUND

A. Legal Background

2. As set forth fully in the *NAL*,³ carriers are required to protect the confidentiality of certain customer data related to the provision of telecommunications service. This includes location information, which is customer proprietary network information (CPNI) pursuant to section 222 of the Communications Act (Act).⁴ The Commission has advised carriers that this duty requires them to take "every reasonable precaution" to safeguard their customers' information.⁵ Section 222(a) of the Act imposes a general duty on telecommunications carriers to "protect the confidentiality of proprietary information" of "customers."⁶ Section 222(c) establishes specific privacy requirements for "customer proprietary network information" or CPNI, namely information relating to the "quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" and that is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."⁷ The Commission has promulgated regulations implementing section 222 (CPNI Rules), which require, among other things, that carriers employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."⁸

3. *Customer Consent to Disclose CPNI.* With limited exceptions, a carrier may only use, disclose, or permit access to CPNI with customer approval.⁹ Generally, carriers must obtain a customer's "opt-in approval" before disclosing that customer's CPNI.¹⁰ This means that a carrier must obtain the

² *T-Mobile USA, Inc.*, Response to Notice of Apparent Liability for Forfeiture and Admonishment (filed May 7, 2020) (on file in EB-TCDD-18-00027702) (*NAL* Response or Response).

³ See generally *NAL*.

⁴ 47 U.S.C. § 222.

⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6959, para. 64 (2007) (*2007 CPNI Order*).

⁶ 47 U.S.C. § 222(a).

⁷ 47 U.S.C. § 222(c), (h)(1)(A) (emphasis added). "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). The mobile voice services provided by T-Mobile are "telecommunications services." See 47 U.S.C. § 332(c)(1); H.R. Conf. Rep. No. 104-458 at 125 (1996) ("This definition [of 'telecommunications service'] is intended to include commercial mobile service.").

⁸ See 47 CFR § 64.2001 *et seq.*; *id.* § 64.2010(a). The CPNI Rules are a subset of, and are thus included within, the Commission's rules.

⁹ 47 U.S.C. § 222(c)(1) ("Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.") (emphasis added).

¹⁰ 47 CFR § 64.2007(b).

customer's "affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request"¹¹

4. This opt-in requirement has been in place since 2007, when the Commission amended its rules in the *2007 CPNI Order* after finding that once carriers disclosed CPNI to third parties, including joint venturers and independent contractors, that information was out of the control of the carrier and had a higher risk of being improperly disclosed.¹² Accordingly, among other things, this opt-in requirement was meant to allow individual consumers to determine if they wanted to bear the increased risk associated with sharing CPNI with such third parties.¹³ In the Commission's view, obtaining a customer's express consent in these circumstances is particularly important, because a carrier cannot simply rectify the harms resulting from a breach by terminating its agreement with such a third party, "nor can the Commission completely alleviate a customer's concerns about the privacy invasion through an enforcement proceeding."¹⁴ The Commission further concluded that contractual safeguards between a carrier and such a third party do not obviate the need for explicit customer consent, as such safeguards do not eliminate the increased risk of unauthorized CPNI disclosures that accompany information that is provided by a carrier to such a third party.¹⁵ Thus, the Commission determined that, with limited exceptions, a carrier may only use, disclose, or permit access to CPNI with the customer's opt-in approval.¹⁶

5. *Reasonable Measures to Safeguard CPNI.* The Commission has also recognized that an opt-in requirement alone is not enough to protect customer CPNI, especially in light of tactics like "pretexting," where a party pretends to be a particular customer or other authorized person in order to illegally obtain access to that customer's information (thus circumventing opt-in requirements).¹⁷ Therefore, the Commission adopted rules requiring carriers to "take reasonable measures to *discover* and *protect* against attempts to gain unauthorized access to CPNI."¹⁸ To provide some direction on how carriers should protect against tactics like pretexting, the Commission included in its amended rules customer authentication requirements tailored to whether a customer is seeking in-person, online, or over-the-phone access to CPNI.¹⁹ It also adopted password and account notification requirements.²⁰

6. The Commission made clear that the specific customer authentication requirements it adopted were "minimum standards" and emphasized the Commission's commitment "to taking resolute enforcement action to ensure that the goals of section 222 [were] achieved."²¹ Although carriers are not expected to eliminate every vulnerability to the security of CPNI, they must employ "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."²² They must also take reasonable measures to protect the confidentiality of CPNI—a permanent and ongoing obligation to

¹¹ 47 CFR § 64.2003(k).

¹² *2007 CPNI Order*, 22 FCC Rcd at 6947-53, paras. 37-49. Prior to the *2007 CPNI Order* the Commission's rules had allowed carriers to share CPNI with joint venture partners and independent contractors on an opt-out basis for the purpose of marketing communications-related services to customers. *Id.* at 6931-32, para. 8.

¹³ *2007 CPNI Order*, 22 FCC Rcd at 6950, para. 45.

¹⁴ *2007 CPNI Order*, 22 FCC Rcd at 6949, para. 42.

¹⁵ *2007 CPNI Order*, 22 FCC Rcd at 6952, para. 49.

¹⁶ *See* 47 CFR § 64.2007(b).

¹⁷ *See* *2007 CPNI Order*, 22 FCC Rcd at 6928, para. 1 & n.1.

¹⁸ 47 CFR § 64.2010(a) (emphasis added).

¹⁹ *See* 47 CFR § 64.2010(b)-(d).

²⁰ *See* 47 CFR § 64.2010(e)-(f).

²¹ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65.

²² 47 CFR § 64.2010(a).

police disclosures and ensure proper functioning of security measures.²³ As the Commission stated in the *NAL*, several government entities provide guidance and publish best practices that are intended to help companies evaluate the strength of their information security measures.²⁴

7. *Section 217.* Finally, the Act makes clear that carriers cannot disclaim their statutory obligations to protect their customers' CPNI by delegating such obligations to third parties. Section 217 of the Act provides that "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."²⁵

B. Factual Background

8. *Customer Location Information and T-Mobile's Location-Based Services Business Model.* T-Mobile provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on T-Mobile's wireless network.²⁶ As part of its business, T-Mobile ran a Location-Based Services (LBS) program until February 8, 2019. Through the LBS program, T-Mobile sold access to its customers' location information to companies known as "location information aggregators," who then resold access to such information to third-party location-based service providers or, in some cases, to intermediary companies who then resold access to such information to location-based service providers.²⁷ T-Mobile had arrangements with two location information aggregators: LocationSmart and Zumigo (the Aggregators).²⁸ Each Aggregator, in turn, had arrangements with location-based service providers. In total, T-Mobile sold access to its customers' location information (directly or indirectly) to 75 third-party entities (including the two Aggregators).²⁹

²³ See 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64 ("We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.").

²⁴ For example, the National Institute of Standards and Technology (NIST) is responsible for developing information security standards and guidelines, including minimum requirements for federal information systems. NIST publishes cybersecurity and privacy frameworks which feature instructive practices and guidelines for organizations to reference. The publications can be useful in determining whether particular cybersecurity or privacy practices are reasonable by comparison. The model practices identified in the NIST and other frameworks, however, are not legally binding rules, and we do not consider them as such here. The Federal Trade Commission (FTC), the FCC's Communications Security, Reliability, and Interoperability Council (CSRIC), and the Cybersecurity & Infrastructure Security Agency (CISA) also offer guidance related to managing data security risks. See NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1 (Apr. 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (NIST Cybersecurity Framework); NIST, The NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0 (Jan. 16, 2020), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf>; FTC, Start with Security: A Guide for Business, Lessons Learned from FTC Cases (June 2015), <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>; Communications Security, Reliability and Interoperability Council, CSRIC Best Practices, <https://opendata.fcc.gov/Public-Safety/CSRIC-Best-Practices/qb45-rw2t/data>; CISA, Cross-Sector Cybersecurity Performance Goals and Objectives (last visited Aug. 17, 2022), <https://www.cisa.gov/cpgs>.

²⁵ 47 U.S.C. § 217.

²⁶ See T-Mobile US, Inc., 2021 Annual Report, https://s29.q4cdn.com/310188824/files/doc_financials/2021/ar/TMUS-2021-Annual-Report.pdf.

²⁷ The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *NAL*, 35 FCC Rcd at 1790-99, paras. 12-38.

²⁸ T-Mobile does not contend that its customers consented to these arrangements with the Aggregators.

²⁹ See *NAL* Response at 57. The *NAL* Response identified factual errors in the *NAL* related to the number of entities involved in T-Mobile's LBS program; the *NAL* listed 83 total entities (including the two Aggregators), but the *NAL* Response provided clarification that eight entities were counted twice. See *NAL*, 35 FCC Rcd at 1792, para. 14; *NAL* Response at 57.

9. The T-Mobile LBS program was largely governed via contractual provisions that vested T-Mobile with oversight authority over the Aggregators. The Aggregators then entered into their own contracts with various LBS providers. This arrangement meant that it was LBS providers who were obligated “to notify [customers] and collect affirmative customer consent for any use of location information”³⁰ – not the Aggregators or T-Mobile. T-Mobile asserts that its LBS program was subject to a number of safeguards and that the LBS providers and Aggregators had to satisfy various requirements, which were memorialized in and governed by contract provisions with the Aggregators.³¹ The contracts obligated the Aggregators to monitor the practices of the location-based service providers—including by making sure the LBS providers notified customers and collected affirmative customer consent for any use of location information.³² As a result, T-Mobile did not independently verify the customers’ consent before providing access to the location data. T-Mobile explained that there were various acceptable mechanisms for the LBS providers and Aggregators to obtain consent, including via text message (with consumer responding with their consent), website interaction, and implicit consent “where the consumer is requesting a service that quite clearly relies on location data, such as roadside assistance services.”³³

10. According to T-Mobile, in order to participate in the LBS program and access consumers’ location information, “the Aggregator was required to submit to T-Mobile a completed questionnaire that provided information about the location-based service provider and the proposed use case or ‘campaign.’”³⁴ T-Mobile explains that using the questionnaires, the Company would receive a “detailed description” of the LBS provider’s “notice and consent process, data security mechanisms and data retention policies,”³⁵ which was reviewed and then (if it met certain standards) approved by T-Mobile.³⁶ Once approved, T-Mobile asserts that it would assign a “campaign-specific ID.”³⁷ That ID was to be used by the LBS provider for every location information request it submitted to the Aggregator, and then likewise transmitted from the Aggregator to T-Mobile, which T-Mobile asserts allowed the Company “to track each campaign.”³⁸

11. T-Mobile had broad authority under its contracts with the Aggregators to quickly terminate access to customer location information and to “suspend the transmission of location information” to any LBS provider the Company “believed was not complying with its obligations.”³⁹ In addition, T-Mobile “had the right to terminate its relationship with each Aggregator, for any reason, upon

³⁰ See *NAL*, 35 FCC Rcd at 1793, para. 16 (citing Response to Letter of Inquiry from T-Mobile USA, Inc., to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 10, Introduction (Nov. 30, 2018) (on file in EB-TCD-18-00037702 (LOI Response))).

³¹ See *NAL*, 35 FCC Rcd at 1792-94, paras. 16-19.

³² See *NAL*, 35 FCC Rcd at 1793, para. 16 (citing LOI Response at 10, Introduction).

³³ *NAL*, 35 FCC Rcd at 1793, para. 17 (citing E-mail from David Solomon, Wilkinson Barker Knauer, LLC, Counsel for T-Mobile USA, Inc., to Michael Epshteyn, Assistant Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 28, 2019, 18:27 ET) (on file in EB-TCD-18-00027702) (T-Mobile E-mail)).

³⁴ *NAL*, 35 FCC Rcd at 1793, para. 17 (citing LOI Response at 7-8, 11, Response to Question 1).

³⁵ *NAL*, 35 FCC Rcd at 1793, para. 17 (citing LOI Response at 7-8, 11, Response to Question 1).

³⁶ *NAL*, 35 FCC Rcd at 1793, para. 17 (citing LOI Response at 7-8, Introduction).

³⁷ *NAL*, 35 FCC Rcd at 1793, para. 18 (citing LOI Response at 11, Response to Question 1).

³⁸ *NAL*, 35 FCC Rcd at 1793, para. 18 (citing LOI Response at 11, Response to Question 1).

³⁹ *NAL*, 35 FCC Rcd at 1793-94, para. 19 (citing LOI Response at T-MOBILE00013594, Response to Request for Documents No. 3, 2014 Location Aggregator License Agreement between T-Mobile and TechnoCom Corporation d/b/a LocationSmart (executed on May 20, 2014, by Stephen Leptich, Sr., Corporate Counsel, for T-Mobile USA, Inc., and by Mario Proietti, CEO for LocationSmart), Sections 7.2-3 (T-Mobile-LocationSmart Agreement); LOI Response at TMOBILE0001230, Response to Request for Documents No. 3, 2014 Location Aggregator License Agreement between T-Mobile and Zumigo, Inc. (executed on Feb. 11, 2014, by Stephen Leptich, Sr., Corporate Counsel, for T-Mobile USA, Inc., and by Chirag Bakshi, CEO for Zumigo), Sections 7.2-3 (T-Mobile-Zumigo Agreement)).

30 days' prior written notice, or immediately upon the Aggregator's breach of the contract's confidentiality and data security terms."⁴⁰

12. T-Mobile also had the authority to conduct audits and other internal reviews of the LBS program. According to T-Mobile, it conducted two risk assessments of its Aggregators (in 2016 and 2018) to confirm, among other things, whether they "were following the policies and procedures set forth in their contracts with T-Mobile."⁴¹ T-Mobile asserts that both assessments found that "the Aggregators were properly obtaining consent before accessing T-Mobile customer location information."⁴² However, T-Mobile also admits that both assessments identified "recommendations to enhance program governance" – with the questionnaire used to assess LBS providers the result of a recommendation from the 2016 assessment.⁴³ T-Mobile did not describe any of the recommendations from the 2018 assessment.⁴⁴ Finally, T-Mobile claims that both the Company and the Aggregators "reviewed consent records" as part of "periodic assessments," but T-Mobile did not provide any further information about the results of such periodic assessments.⁴⁵

13. *T-Mobile's Discovery of Potential Misuse of Customers' Location Information in 2017.* On or around July 2017, T-Mobile "learned through a third party that an unidentified location-based service provider was using an obfuscated website domain to provide wireless device-tracking services to bail bond and similar companies without the wireless customer's authorization."⁴⁶ T-Mobile investigated the allegation and eventually identified LocateUrCell as the LBS provider misusing customer location information.⁴⁷ LocateUrCell was only approved to receive T-Mobile customer location information for its approved campaign (providing customers the ability to locate their missing phones); LocateUrCell worked with the Aggregator LocationSmart.⁴⁸ T-Mobile contacted LocationSmart in September 2017, informing the Aggregator that its access to customer location information would be suspended unless it provided a satisfactory response to T-Mobile's inquiry about LocateUrCell within 24 hours.⁴⁹ It was only then that T-Mobile learned LocationSmart had "terminated its contract with LocateUrCell and permanently disabled LocateUrCell's access to T-Mobile customer location data on September 12, 2017, after LocateUrCell failed to respond to LocationSmart's request for records demonstrating customer consent."⁵⁰ T-Mobile concedes that LocateUrCell's unauthorized disclosures were made possible and remained hidden because the unauthorized requests were "hosted on the same system" and "used the same campaign ID" as the authorized requests.⁵¹ Thus, "T-Mobile could not differentiate between location information requests for the authorized LocateUrCell phone-finding service from location information requests for the unauthorized . . . tracking service."⁵² Following this incident, "T-Mobile 'sought assurances' from LocationSmart regarding

⁴⁰ NAL, 35 FCC Rcd at 1794, para. 19 (T-Mobile-LocationSmart Agreement, Sections 7.2-3; T-Mobile-Zumigo Agreement, Sections 7.2-3).

⁴¹ NAL, 35 FCC Rcd at 1794, para. 20 (citing LOI Response at 18, Response to Question 11).

⁴² NAL, 35 FCC Rcd at 1794, paras. 21-22 (citing LOI Response at 18, Response to Question 11).

⁴³ NAL, 35 FCC Rcd at 1794, paras. 21-22 (citing LOI Response at 18, Response to Question 11).

⁴⁴ See NAL, 35 FCC Rcd at 1794, para. 22.

⁴⁵ NAL, 35 FCC Rcd at 1794, para. 23 (citing LOI Response at 14, Response to Question 5.e.).

⁴⁶ NAL Response at 52; see also NAL, 35 FCC Rcd at 1794-95, para. 24.

⁴⁷ NAL Response at 52.

⁴⁸ See NAL, 35 FCC Rcd at 1794-95, para. 24.

⁴⁹ See NAL, 35 FCC Rcd at 1795, para. 25 (citing LOI Response at 17, Response to Question 10).

⁵⁰ NAL, 35 FCC Rcd at 1795, para. 25 (quoting LOI Response at 17-18, Response to Question 10).

⁵¹ NAL, 35 FCC Rcd at 1795, para. 26 (quoting LOI Response at 18, Response to Question 10).

⁵² NAL, 35 FCC Rcd at 1795, para. 26 (citing LOI Response at 18, Response to Question 10).

its monitoring of location-based service providers and ‘reminded’ LocationSmart about its contractual obligations to notify T-Mobile of any non-compliance it detected.”⁵³

14. *Unauthorized Access and Use of Customer Location Information.* On May 10, 2018, the *New York Times* published an article that detailed security breaches involving T-Mobile’s (and other carriers’) practice of selling access to customer location information.⁵⁴ The *NAL* includes a more detailed summary of the article and its findings, but essentially the breaches involved a location-based service provider (Securus Technologies, Inc., or Securus) that offered a location-finding service to law enforcement and corrections officials that allowed such officials to access customer mobile device location *without* that device owner’s knowledge or consent.⁵⁵ Not only was Securus’s location-finding service outside the scope of its approved “campaign” or any agreement with either Aggregator (and thus had not been reviewed by T-Mobile), but despite Securus’s claims that the program required appropriate “legal authorization,” it did not verify such authorizations and its program was used and abused by a (now former) Missouri Sheriff (Cory Hutcheson) for non-law enforcement purposes and in the absence of any such legal authorization.⁵⁶ Securus obtained location services from a company called 3Cinteractive, and 3Cinteractive obtained T-Mobile’s consumers’ location information pursuant to a contract with the Aggregator LocationSmart.⁵⁷ Similar to the 2017 LocateUrCell incident, T-Mobile again conceded that it had “no way” to distinguish requests that were unrelated to the authorized campaign (which involved an inmate collect-calling service) from valid, campaign-related requests because “Securus offered this [unauthorized] service using the [same] campaign ID that T-Mobile had assigned” to the approved campaign.⁵⁸

15. The Department of Justice’s U.S. Attorney’s Office for the Eastern District of Missouri charged Hutcheson with, among other things, wire fraud and illegally possessing and transferring the means of identification of others, and Hutcheson pleaded guilty on November 20, 2018.⁵⁹ The Department of Justice’s investigation of Hutcheson’s actions included an examination of how the Securus location-finding service operated. Once Hutcheson became an authorized user of Securus’s LBS software, he was able to obtain the location of specific mobile telephone devices.⁶⁰ In order to do so, users (including Hutcheson) were required to input the telephone number of the device they wanted to

⁵³ *NAL*, 35 FCC Rcd at 1795, para 25 (quoting LOI Response at 17, Response to Question 10).

⁵⁴ See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

⁵⁵ See *NAL*, 35 FCC Rcd at 1795-1796, paras. 27-28 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

⁵⁶ See *NAL*, 35 FCC Rcd at 1795-96, paras. 27-28 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>; Doyle Murphy, *Ex-Missouri Sheriff Cory Hutcheson Sentenced to 6 Months in Prison*, Riverfront Times (Apr. 29, 2019), <https://www.riverfronttimes.com/newsblog/2019/04/29/ex-missouri-sheriff-cory-hutcheson-sentenced-to-6-months-in-prison>).

⁵⁷ See *NAL*, 35 FCC Rcd at 1796, para. 29.

⁵⁸ See *NAL*, 35 FCC Rcd at 1796-97, para. 30 (citing LOI Response at 10, 19, Introduction, Response to Question 12).

⁵⁹ See Press Release, U.S. Attorney’s Office Eastern District of Missouri, *Mississippi County Sheriff Pleads Guilty to Fraud and Identity Theft, Agrees to Resign* (Nov. 20, 2018), <https://www.justice.gov/usao-edmo/pr/mississippi-county-sheriff-pleads-guilty-fraud-and-identity-theft-agrees-resign>.

⁶⁰ See Government’s Sentencing Memorandum at 3, *United States v. Corey Hutcheson*, Case No. 1:18-CR-00041 JAR, Doc. No. 65 (E.D. Mo. Apr. 23, 2019) (Hutcheson Sentencing Memo), <https://storage.courtlistener.com/recap/gov.uscourts.moed.160663/gov.uscourts.moed.160663.65.0.pdf>; see also *NAL*, 35 FCC Rcd at 1795-96, paras. 27-28.

locate, and then “upload a document manually checking a box, the text of which stated, ‘[b]y checking this box, I hereby certify the attached document is an official document giving permission to look up the location on this phone number requested.’”⁶¹ As soon as Hutcheson (or any other authorized user) submitted his request and uploaded a document, the Securus LBS platform would *immediately* provide the requested location information (regardless of the adequacy of the uploaded document).⁶² Rather than “uploading the required legal process,” Hutcheson instead “routinely uploaded false and fraudulent documents . . . , each time representing that the uploaded documents were valid legal process authorizing the location requests the defendant made.”⁶³ Those “false and fraudulent documents” included “his health insurance policy, his auto insurance policy, and pages selected from Sheriff training materials.”⁶⁴ Hutcheson “submitted thousands of Securus LBS requests and obtained the location data of hundreds of individual phone subscribers without valid legal authorization.”⁶⁵

16. *T-Mobile’s Response to the Securus Disclosures.* T-Mobile terminated Securus’s and 3Cinteractive’s access to T-Mobile customer location information on May 11, 2018, following the *New York Times* article.⁶⁶ Later, on October 26, 2018, T-Mobile notified the Aggregators that their existing contracts would not be renewed once they expired on March 9, 2019, which would effectively end T-Mobile’s LBS program.⁶⁷

17. More than seven months after the *New York Times* article revealing the Securus disclosures, T-Mobile was made aware of a similar incident involving one of the Company’s LBS providers, MicroBilt. In a January 8, 2019, *Motherboard* article, it was reported that access to customer location information was sold and resold, with little or no oversight, within the bail bonds industry, and that this led to consumers being tracked without their knowledge or consent—including by MicroBilt.⁶⁸ T-Mobile first learned of this from a *Motherboard* reporter on January 3, 2019.⁶⁹ According to T-Mobile, “the MicroBilt application that T-Mobile had received [in 2016] did not indicate that ‘Microbilt would disclose the location information to any third party.’”⁷⁰ Thus, on January 4, 2019, MicroBilt’s Aggregator in the LBS program (Zumigo) informed T-Mobile that it had “suspended transmission of any T-Mobile customer location information to MicroBilt”⁷¹ and T-Mobile itself (as a “duplicative technical measure”) “permanently disabled access to its customers’ location information by Zumigo for the purpose of transmitting it to MicroBilt.”⁷² In a repeat of the aftermath following both the LocateUrCell incident and the Securus disclosure, “T-Mobile was again unable to differentiate requests for customer location

⁶¹ Hutcheson Sentencing Memo at 3; *see also* NAL, 35 FCC Rcd at 1795-96, para. 27.

⁶² *See* Hutcheson Sentencing Memo at 3-4; *see also* NAL, 35 FCC Rcd at 1795-96, para. 27.

⁶³ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1796, para. 28.

⁶⁴ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1796, para. 28.

⁶⁵ Hutcheson Sentencing Memo at 4; *see also* NAL, 35 FCC Rcd at 1796, para. 28.

⁶⁶ *See* NAL, 35 FCC Rcd at 1797, para. 31 (citing LOI Response at 9-10, Introduction).

⁶⁷ *See* NAL, 35 FCC Rcd at 1797, para. 32 (citing LOI Response at 15, Response to Question 6, Supplemental LOI Response at 6, Response to Question 1).

⁶⁸ *See* NAL, 35 FCC Rcd at 1798, para. 35 (citing Joseph Cox, *I Gave a Bounty Hunter \$300. Then He Located Our Phone*, *Motherboard* (Jan. 8, 2019), https://motherboard.vice.com/en_us/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-MicroBilt-zumigo-tmobile).

⁶⁹ *See* NAL, 35 FCC Rcd at 1797, para. 33 (citing T-Mobile E-mail).

⁷⁰ NAL, 35 FCC Rcd at 1797, para. 33 (quoting T-Mobile E-mail).

⁷¹ *See* NAL, 35 FCC Rcd at 1797, paras. 34 (citing T-Mobile E-mail; Response to Supplemental Letter of Inquiry, from T-Mobile USA, Inc., to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 12, Response to Question 5.c. (June 7, 2019) (on file in EB-TCD-18-00027702 (Supplemental LOI Response))).

⁷² NAL, 35 FCC Rcd at 1797-98, para. 34 (quoting Supplemental LOI Response at 12, Response to Question 5.c.)

information that were made for purposes authorized by T-Mobile from those that were not⁷³ because MicroBilt's malfeasance "'was masked as a permissible use."⁷⁴

18. It was not until February 8, 2019, that T-Mobile's LBS program (and the sharing of the Company's customers' location information) finally ceased—in other words, 275 days from when the *New York Times* first reported on the Securus location-finding service, as well as the abuse of that service by Hutcheson.⁷⁵

19. *Notice of Apparent Liability.* On February 28, 2020, the Commission issued the *T-Mobile NAL* proposing a \$91,630,000 fine against T-Mobile for its apparent willful and repeated violation of section 222 of the Act and section 64.2010 of the Commission's CPNI Rules for failing to have reasonable protections in place to prevent unauthorized access to customer location information. In the *NAL*, the Commission also admonished T-Mobile for apparently disclosing its customers' location information, without their consent, to a third party who was not authorized to receive it.

20. On May 7, 2020, T-Mobile filed a response to the *NAL*.⁷⁶ T-Mobile makes a number of arguments as to why the *NAL* should be withdrawn and cancelled. T-Mobile argues that location information is not CPNI and thus is not subject to the Act and the Commission's rules, and that even if it was, the Company did not have fair notice that location information would be classified as CPNI.⁷⁷ T-Mobile also argues that it acted reasonably both pre- and post-publication of the *New York Times* article. The Company claims that the LBS program had reasonable protections in place before the *New York Times* article, and that the Company's response to the article, including its months-long continuation of the LBS program, was likewise reasonable.⁷⁸ T-Mobile argues that the forfeiture amount is arbitrary and capricious.⁷⁹ Finally, T-Mobile contends that the forfeiture amount is incorrect insofar as the *NAL* either miscounts the number of LBS providers and/or their termination dates from the LBS program in the forfeiture calculation.⁸⁰

III. DISCUSSION

21. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁸¹ section 1.80 of the Commission's rules,⁸² and the Commission's *Forfeiture Policy Statement*.⁸³ When we assess forfeitures, section 503(b)(2)(E) requires that the Commission take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and

⁷³ *NAL*, 35 FCC Rcd at 1798, para 34.

⁷⁴ *NAL*, 35 FCC Rcd at 1798, para 34 (quoting Supplemental LOI Response at 12, Response to Question 5.c.).

⁷⁵ See *NAL*, 35 FCC Rcd at 1798, para. 37 (citing Supplemental LOI Response at 7, Response to Question 1.d); *NAL* Response at 34. T-Mobile did not accelerate the expiration of its agreements with the Aggregators, which terminated on March 9, 2019. See Supplemental LOI Response at 7, Response to Question 1.d.

⁷⁶ See *NAL* Response.

⁷⁷ *NAL* Response at 10-16.

⁷⁸ *NAL* Response at 22-38.

⁷⁹ *NAL* Response at 35-40.

⁸⁰ *NAL* Response at 57-60.

⁸¹ 47 U.S.C. § 503(b).

⁸² 47 CFR § 1.80.

⁸³ *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 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

such other matters as justice may require.”⁸⁴ We have fully considered T-Mobile’s NAL Response, which includes a variety of legal and factual arguments. With one exception, we find none of T-Mobile’s arguments persuasive. Upon review of T-Mobile’s NAL Response⁸⁵ and a further review of the evidence in the record, we will adjust the forfeiture calculation to account for updated evidence related to (1) the termination dates for various entities in the LBS Program and (2) eight entities that were each counted twice in the original forfeiture calculation. We therefore reduce the \$91,630,000 forfeiture proposed in the *NAL* by \$11,550,000, and impose a penalty of \$80,080,000.

A. Location Information is CPNI

22. As the *NAL* explained in more detail, the customer location information disclosed in T-Mobile’s LBS program is CPNI under the Act and our rules.⁸⁶ Section 222 defines CPNI as “information that relates to the quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”⁸⁷ The customer location information used in T-Mobile’s LBS program falls squarely within this definition. T-Mobile’s arguments to the contrary⁸⁸ are largely reiterations of arguments the Commission considered and found unpersuasive in the *NAL*. Consistent with the analysis of location data found in the *NAL*, we remain persuaded that the location data at issue here constitute CPNI.

23. *First*, the customer location information at issue here relates to the location of a telecommunications service—i.e., T-Mobile’s commercial mobile service.⁸⁹ As fully explained in the *NAL*:

A wireless mobile device undergoes an authentication and attachment process to the carrier’s network, via the closest towers. After a mobile device is authenticated and logically attached to a wireless network, it may be (1) connected (sending/receiving data/voice) or (2) idle. In either state, the carrier must be aware of and use the device’s location in order for it to enable customers to send and receive calls. T-Mobile is therefore providing telecommunications service to these customers whenever it is enabling the customer’s device to send and receive calls—regardless of whether the device is actively in use for a call.⁹⁰

24. We conclude that the location information at issue here meets the first prong of the CPNI definition under either of two alternative interpretations. For one, we believe that the relevant statutory language is best read as referring to “information that relates to the . . . location, . . . of a telecommunications service”⁹¹ That interpretation accords with the “rule of the last antecedent,” which suggests that the term “of use” in section 222(h)(1)(A) modifies only “amount,” as opposed to the

⁸⁴ 47 U.S.C. § 503(b)(2)(E).

⁸⁵ See NAL Response at 57 (noting that T-Mobile had inadvertently submitted duplicate entries for various LBS providers in its response to a letter of inquiry).

⁸⁶ See *NAL*, 35 FCC Rcd at 1799-1801, paras. 41-48.

⁸⁷ 47 U.S.C. § 222(h)(1)(A) (emphasis added).

⁸⁸ See NAL Response at 2-3, 10-16.

⁸⁹ See 47 U.S.C. § 332(c)(1) (providing that “a person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter”), (d)(1) (defining “commercial mobile service”).

⁹⁰ See *NAL*, 35 FCC Rcd at 1800, para. 43.

⁹¹ 47 U.S.C. § 222(h)(1)(A).

preceding terms such as “location.”⁹² Our interpretation also better squares with the broader operation of section 222. If the language “of use” modified every term in the preceding list, it would lead to apparently anomalous results. For instance, although the phrase “amount of use of a telecommunications service” plainly refers at least to the number and length of telephone calls, it is not clear what “technical configuration of use” would mean.⁹³ And our interpretation squares more readily with section 222(d)(1), which preserves carriers’ ability to use CPNI to “initiate” service⁹⁴—an event that, aspects of which, ordinarily occur before the service is in “use.”

25. The location information at issue here readily fits within that interpretation of the first prong of the CPNI definition. T-Mobile’s customers can access the commercial mobile service to which they subscribe over a broad geographic area, and their location at a given point in time—and the fact of T-Mobile’s ability to use its network to determine that location—is reasonably understood as associated with or a reference to the location of the T-Mobile telecommunications service.⁹⁵ Consequently, consistent with our assessment in the *NAL*,⁹⁶ we find this to be information that “relates to” the location of T-Mobile’s telecommunications service within the meaning of the first prong of the CPNI definition.⁹⁷

26. In the alternative, even if the term “of use” modified “location,” we still conclude the information at issue fits within the first prong of the definition of CPNI. T-Mobile does not dispute the *NAL*’s explanation that customers’ devices and T-Mobile’s network regularly exchange information as necessary for customers to send and receive calls.⁹⁸ To the extent that T-Mobile contends that this does not represent use of the telecommunications service because it merely enables the provision of that service, T-Mobile does not demonstrate why that is a fair characterization or why it would represent a meaningful distinction in any case. Consistent with the reasoning of the *NAL*,⁹⁹ we believe that T-

⁹² See, e.g., *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (the rule of the last antecedent “provides that ‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows’”).

⁹³ We are unpersuaded by T-Mobile’s claim that interpreting “of use” to modify only “amount” would lead to anomalies because “information relating to the ‘quantity, technical configuration, [or] type . . . of a telecommunications service’ . . . would relate to the network itself, not the information of individual customers.” *NAL* Response at 12 (emphasis omitted). Even if the information relates in part to the network, it also relates to an individual customer by identifying characteristics of the telecommunications service subscribed to by that customer. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8064-65, para. 2 (1998) (“CPNI includes information that is extremely personal to customers as well as commercially valuable to carriers,” including “the types of service offerings to which the customer subscribes”).

⁹⁴ 47 U.S.C. § 222(d)(1).

⁹⁵ See, e.g., *NAL*, 35 FCC Rcd at 1790, para. 12 (“T-Mobile provides mobile voice and data services to consumers throughout the United States by enabling consumer mobile phones to make and receive calls or transmit data on T-Mobile’s wireless network.”).

⁹⁶ See, e.g., *NAL*, 35 FCC Rcd at 1799-1801, paras. 43, 46.

⁹⁷ See, e.g., *Collins Concise Dictionary*, Third Ed., at 1129 (HarperCollins Pub. 1995) (defining “relate” as, among other things, “establishing association (between two or more things) or (of something) to have relation or reference (to something else)”; *American Heritage Dictionary*, Third Ed., at 695 (Dell Pub. 1994) (defining “relate” as, among other things, “To bring into logical or natural association,” “To establish or demonstrate a connection between,” or “To have connection, relation, or reference”); *Merriam-Webster’s Collegiate Dictionary*, Tenth Ed., at 987 (Merriam-Webster Pub. 1994) (defining “relate” as, among other things, “to show or establish logical or causal connection between”); *The Oxford Paperback Dictionary & Thesaurus*, at 636 (Oxford Univ. Press 1997) (defining “relate” as, among other things, “connect in thought or meaning” or “have reference to”).

⁹⁸ *NAL*, 35 FCC Rcd at 1799-1800, para. 43.

⁹⁹ See, e.g., *NAL*, 35 FCC Rcd at 1799-1801, paras. 43, 46.

Mobile's customers subscribe to its commercial mobile service to enable them to receive and transmit calls, and when customers' devices are exchanging communications with T-Mobile's network, and thereby ensuring that they can receive incoming calls and place outgoing calls, we think that is a clear case of using the service to which they have subscribed, even outside the moments in time when they are engaged in calls.¹⁰⁰

27. We also are unpersuaded by T-Mobile's arguments that the location information covered by the first prong of the definition of CPNI is limited to call location information for voice calls based on what T-Mobile gleans from other language in section 222.¹⁰¹ In addition to the *NAL*'s responses in this regard,¹⁰² we conclude that the use of "location" in (h)(1)(A) as opposed to "call location information" in (d)(4) and (f)(1) must be given some significance.¹⁰³ All location information is protected as CPNI under (h)(1)(A). But carriers can disclose *call location* information for 911 purposes under (d)(4), which makes sense because 911 calls are *calls*.¹⁰⁴ Nor would it have been irrational for Congress to expressly require opt-in consent for call location information in section 222(f)(1) if the definition of CPNI encompasses other forms of location information, as well. At the time the provision was enacted in 1999, Congress might reasonably have viewed call location information as obviously sufficiently sensitive to necessitate opt-in approval requirements while leaving it to the Commission's discretion whether to require opt-in approval for other location information, just as for other information falling within the definition of CPNI more generally. In addition, the Commission's references to "calls" in a prior order that was focused in significant part on data regarding customers' calls—and which did not purport to exhaustively address the application of section 222 to mobile wireless service—cannot reasonably be read as setting forth the outer bounds of the Commission's understanding of section 222.¹⁰⁵

28. *Second*, the location information at issue was obtained by T-Mobile solely by virtue of its customer-carrier relationship. The *NAL* explains this in more detail, but the crux of the matter is that:

¹⁰⁰ Definitions of "use" appear sufficiently broad to encompass our understanding of the term in this scenario. See, e.g., *Collins Concise Dictionary*, Third Ed., at 1483 (HarperCollins Pub. 1995) (defining "use," among other things, to mean "to put into service or action; employ for a given purpose"); *American Heritage Dictionary*, Third Ed., at 884 (Dell Pub. 1994) (defining "use," among other things, to mean "To put into service; employ" and "To avail oneself of; practice"); *Merriam-Webster's Collegiate Dictionary*, Tenth Ed., at 1301 (Merriam-Webster Pub. 1994) (defining "use," among other things, to mean "to put into action or service; avail oneself of"); *The Oxford Paperback Dictionary & Thesaurus*, at 853 (Oxford Univ. Press 1997) (defining "use," among other things, to mean "cause to act or serve for purpose; bring into service" and "exploit for one's own ends").

¹⁰¹ See, e.g., *NAL* Response at 13-15.

¹⁰² *NAL*, 35 FCC Rcd at 1800, para. 45.

¹⁰³ This interpretive approach is consistent with how the Commission has approached the interpretation of section 222 in other contexts in the past. See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8084-85, para 32 (1998) (distinguishing the interpretation of different language in section 222(a), (c)(1), and (d)(1), given that, "[u]nder well-established principles of statutory construction, 'where Congress has chosen different language in proximate subsections of the same statute,' we are 'obligated to give that choice effect'"). Particularly given that T-Mobile neglects this textual distinction in its attempts to rely on legislative history or the rule of lenity, we reject its claims in that regard. See *NAL* Response at 14 n.30.

¹⁰⁴ Given this predominant—but not exclusive—focus of the 1999 amendments to section 222, the references to call location information in the legislative history cited by T-Mobile is not surprising. See *NAL* Response at 14 n.30. But nothing in the legislative history persuades us that Congress meant to exclude non-call location data from the definition of CPNI.

¹⁰⁵ See generally *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609 (2013) (2013 CPNI Declaratory Ruling).

T-Mobile provides wireless telephony services to the affected customers because they have chosen T-Mobile to be their provider of telecommunications service—in other words, they have a carrier-customer relationship. . . . T-Mobile’s customers provided their wireless location data to T-Mobile because of their customer-carrier relationship with T-Mobile, ...¹⁰⁶

29. The *NAL* did not specify with precision the standard for applying the second prong of the CPNI definition, and although we elaborate further on some of its contours here, we likewise need not resolve that question with specificity because we find that prong met here under a range of possible approaches. We begin by observing that the second prong of the CPNI definition is focused on a “relationship”—namely, the “carrier-customer relationship.”¹⁰⁷ A relationship presumes associations involving at least two parties, and we conclude that it must be understood with that context in mind, rather than focused single-mindedly on one side of the relationship. Our accounting for the customer’s viewpoint is also supported by the statutory text’s focus on whether the information “is made available to the carrier by the customer”—rather than “obtained by the carrier”—“solely by virtue of the carrier-customer relationship.”¹⁰⁸ Thus, we reject any suggestion by T-Mobile that the location information at issue here is not CPNI and does not depend exclusively on the carrier-customer relationship¹⁰⁹—we find that suggestion belied by the technical and marketplace realities here, as experienced by T-Mobile customers.

30. Finally, we also note that when a customer subscribes to T-Mobile’s commercial mobile service, T-Mobile “must be aware of and use the device’s location in order for [the Company] to enable customers to send and receive calls,”¹¹⁰ and the customer has no choice but to reveal that location to T-Mobile. T-Mobile does not dispute that the carrier-customer relationship fully enables T-Mobile to obtain the location data at issue here. Likewise, T-Mobile does not claim that a customer, having subscribed to its commercial mobile service, entered a separate agreement with T-Mobile for the provision of that location information—or that T-Mobile’s voice customers had any way to avoid providing that information if they wanted to subscribe to T-Mobile’s commercial mobile service. Under circumstances such as these, we conclude that the location information at issue from T-Mobile’s commercial mobile service customers was “made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”¹¹¹

31. Although we find that reasoning sufficient to resolve the application of the second prong of the CPNI definition, we independently conclude that the same decision is warranted even if we parse the matter more finely. For example, T-Mobile has sought to rely on the theory that location information can be associated with a data session for a non-telecommunications service, taking such location information outside the purview of “CPNI.”¹¹² But we are not persuaded that the fact that location information can be associated with a non-telecommunications service the carrier also provides takes the resulting *relationship* outside the scope of the “carrier-customer” relationship for the specific purposes of the CPNI definition. Nothing dissuades us that the purchase of telecommunications service alone was

¹⁰⁶ See *NAL*, 35 FCC Rcd at 1800, para. 44.

¹⁰⁷ 47 U.S.C. § 222(h)(1)(A).

¹⁰⁸ 47 U.S.C. § 222(h)(1)(A).

¹⁰⁹ See, e.g., *NAL* Response at 10-11 (claiming that because it may be acquired from an “idle device or a device used for a data session” the location information is not CPNI).

¹¹⁰ *NAL*, 35 FCC Rcd at 1800, para. 43.

¹¹¹ 47 U.S.C. § 222(h)(1)(A).

¹¹² See, e.g., *NAL* Response at 10 (“An idle device or a device used for a data session . . . is not being used for a ‘telecommunications service,’ and location information regarding such a device does not fall within the definition of CPNI.”).

sufficient to obligate T-Mobile's customers to make their location data available to T-Mobile,¹¹³ and in evaluating the second prong of the CPNI definition in the past, the Commission has noted that a carrier's "unique position with respect to its customers" when the carrier pre-configures a mobile device to collect information can satisfy "the 'carrier-customer relationship' element of the definition of CPNI."¹¹⁴ We recognize that section 153(51) of the Act provides that "[a] telecommunications carrier shall be treated as a common carrier under [the Act] only to the extent that it is engaged in providing telecommunications services."¹¹⁵ But we are far from that scenario here, given the many necessary links to T-Mobile's telecommunications services for the CPNI definition to apply. For one, the protections of section 222(c) only apply with respect to "information that relates to" certain characteristics of "a telecommunications service subscribed to by any customer of" T-Mobile.¹¹⁶ And the information must have been provided by consumers in a manner that reflects the statutorily required nexus to T-Mobile's telecommunications service.¹¹⁷ Our interpretation and application of section 222 thus accords with the text of both section 222 and section 153 of the Act, even if it does not reflect the policy that T-Mobile would prefer.

32. The Commission therefore affirms its finding from the *NAL* that the location information at issue in the LBS program is CPNI.

B. T-Mobile Had Fair Notice That Its LBS Practices Were Subject to Enforcement Under the Communications Act

33. We reject T-Mobile's claim that it lacked fair notice that its practices involving customer location information were subject to the Communications Act and potential penalties thereunder.¹¹⁸ The language of section 222 demonstrates that customer location information is CPNI; T-Mobile's practices involving CPNI, including customer location information, therefore unquestionably are regulated under the Act and the CPNI Rules; T-Mobile's failure to comply with the requirements of the Act and the CPNI Rules, including the "reasonable measures" mandate of section 64.2010, foreseeably makes the Company liable for a forfeiture penalty under section 503 of the Act.

34. T-Mobile argues that the "the duties and requirements set forth in the *NAL* have never been articulated before and cannot, consistent with the fundamental principles of fair notice and due process, serve as a basis for holding T-Mobile liable for conduct that occurred in the past."¹¹⁹ T-Mobile is mistaken. To the extent these arguments relate to T-Mobile's actions addressing the shortcomings in its LBS program, they will be discussed in section III.C, below.¹²⁰ With regard to T-Mobile's argument that

¹¹³ Consequently, this is not a situation where we are relying on a theory that the carrier-customer relationship was merely one of a "confluence of multiple factors"—including relationships beyond the carrier-customer relationship itself—that collectively were required for T-Mobile to obtain the location information at issue here. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1739 (2019) (In contrast to the statute at issue there, Congress "could have added 'solely' to indicate that actions taken 'because of 'the confluence of multiple factors do not violate the law.'"); *cf. id.* (observing that "[o]ften, events have multiple but-for causes"). By contrast, information that carriers obtain independently from public records, for example, would not be information that the customer provided to the carrier solely by virtue of the carrier-customer relationship.

¹¹⁴ 2013 *CPNI Declaratory Ruling*, 28 FCC Rcd at 9616, para 23.

¹¹⁵ 47 U.S.C. § 153(51).

¹¹⁶ 47 U.S.C. § 222(h)(1)(A).

¹¹⁷ 47 U.S.C. § 222(h)(1)(A).

¹¹⁸ See *NAL* Response at 16, 38-43.

¹¹⁹ *NAL* Response at 38.

¹²⁰ Among such arguments, T-Mobile argues that "nowhere had the Commission stated that implied consent . . . would not be deemed 'express authorization' under Section 222(f)." See *NAL* Response at 39. For the reasons discussed below in paragraphs 60-66, we reject T-Mobile's argument. Pursuant to the CPNI Rules and the Commission's interpretation of section 222(f) itself, it is clear that *explicit* consent is required for the use, disclosure, (continued....)

it did not have fair notice of what it describes as a “30-day clock” to respond to the Securus incident, T-Mobile is mistaken.¹²¹ The 30-day period cited in *NAL* was not a deadline for which T-Mobile required fair notice, but rather a grace period during which the Commission used its discretion and did not assess a fine.¹²²

35. T-Mobile also argues that before the Commission imposes what the Company mischaracterizes as a “new interpretation” of CPNI, the Commission must first “ensure that it has statutory authority to do so and amend its regulations”¹²³ But the Commission is not limited to this option. When, as in this case, a carrier’s conduct falls within an area subject to regulation by the Commission, it is well established that enforcement action is a proper vehicle to adjudicate the specific bounds of what is lawful and what is not, subject to principles of fair notice.¹²⁴

36. Contrary to T-Mobile’s assertion, the Commission is not required by principles of fair notice to announce that LBS data, in particular, meets the definition of CPNI under section 222 of the Act or the CPNI Rules before enforcing that statute and those rules with respect to those data.¹²⁵ As the D.C. Circuit has said, “[t]he fair notice doctrine, which is couched in terms of due process, provides redress only if an agency’s interpretation is ‘so far from a reasonable person’s understanding of the regulations that they could not have fairly informed the regulated party of the agency’s perspective.’”¹²⁶ And, in general, fair notice principles require that a regulated party be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.¹²⁷

and provision of access to call location information under section 222(f). Accordingly, T-Mobile was on notice that implied consent would not be deemed “express authorization” under section 222(f).

¹²¹ See *NAL* Response at 39 (asserting that fair notice was not provided because the “Commission had *never* stated that a carrier would have just 30 days to fully investigate and implement its response to information about a misappropriation of location data—much less specified that this 30-day clock would begin to run upon the publication of allegations in a media report.”).

¹²² However, T-Mobile’s existing data security practices were unreasonable both before and after the May 2018 article—the article merely exposed those unreasonable practices. As such, the Commission could have assessed a fine for every single day such unreasonable practices were in place (both before and after the Securus/Hutcheson disclosures)—the 30 days provided T-Mobile with a grace period to either end the program or reform its practices.

¹²³ See *NAL* Response at 16.

¹²⁴ See, e.g., *City of Arlington, Texas v. FCC*, 569 U.S. 290, 307 (2013) (affirmatively stating that “Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication”); *Neustar, Inc. v. FCC*, 857 F.3d 886, 894 (D.C. Cir. 2017); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that “the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application”) (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (stating that “the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency”).

¹²⁵ See *NAL* Response at 16 (claiming that this is a new interpretation of CPNI). However, this is not a “new interpretation” and, in any event, absolute specificity is not a prerequisite for enforcing a statute or regulation. See, e.g., *Lachman*, 387 F.3d at 56-57 (stating the “mere fact that a statute or regulation requires interpretation does not render it unconstitutionally vague,” and that case law “do[es] not stand for the proposition that any ambiguity in a regulation bars punishment”).

¹²⁶ *Mississippi Comm’n on Envtl. Quality v. EPA*, 790 F.3d 138, 186 (D.C. Cir. 2015) (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998)); see also *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988) (“statutes cannot, in reason, define proscribed behavior exhaustively or with consummate precision”).

¹²⁷ *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) (“In assessing forfeitures against regulated entities, the Commission is required to provide adequate notice of the substance of the rule. . . . The court must consider whether by reviewing the regulation and other public statements issued by the agency, a regulated party

(continued....)

37. Here, the Commission previously explained in the *2013 Declaratory Ruling* that it would not “set out a comprehensive list of data elements that pertain to a telecommunications service and satisfy the definition of CPNI and those data elements that do not.”¹²⁸ Thus, T-Mobile cannot reasonably have assumed that the fact a given scenario had not been expressly addressed by Commission rules and precedent meant it fell outside the scope of CPNI and the associated protections of section 222 and the Commission’s implementing rules. To the contrary, the Commission has stated that “implicit in section 222 is a rebuttable presumption that information that fits the definition of CPNI contained in section 222(h)(1) is in fact CPNI.”¹²⁹ Moreover, even while declining to comprehensively identify CPNI, including in the case of location information, the Commission emphasized that “location information in particular can be very sensitive customer information.”¹³⁰ In addition, notwithstanding its instant fair notice claims, T-Mobile previously asserted to the Commission that it treated *all* customer location information in the same way—whether T-Mobile classified it as CPNI or not.¹³¹

38. Further, our conclusion that the location data at issue here fall within the definition of CPNI flows from the text of section 222 is consistent with the Commission’s approach to interpreting that provision in prior precedent. As noted, CPNI is defined by statute, in relevant part, to include “information that relates to . . . the location . . . of a telecommunications service.”¹³² That definition further directs us to evaluate whether the relevant information “is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”¹³³ Our interpretation of those provisions above relies on the statutory text, interpreted consistent with ordinary tools of statutory interpretation, and is consistent with prior Commission precedent.

39. Finally, T-Mobile had fair notice of its obligations with respect to CPNI under section 64.2010 of the Commission’s rules. In pertinent part, that rule provides that “[t]elecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.”¹³⁴ Beyond “requir[ing] carriers to implement the specific minimum requirements set forth in the Commission’s rules,” to comply with section 64.2010, the Commission “further expect[s]

acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.”) (internal quotations and citations omitted).

¹²⁸ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹²⁹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14495-96, para. 167 (1999). Although the Commission was responding, in part, to a request for clarification from MCI regarding “laundering” of CPNI by virtue of transfers to affiliated or unaffiliated entities, it was not limited just to that scenario alone. See, e.g., *id.* at 14495, para. 166 (describing the MCI request for clarification being addressed as, among other things, “seek[ing] clarification that there is a rebuttable presumption that customer-specific information in a carrier’s files was received on a confidential basis or through a service relationship governed by section 222”).

¹³⁰ *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9617, para. 24 n.54.

¹³¹ See *NAL*, 35 FCC Rcd at 1800, para. 45 n.126 (quoting Supplemental LOI Response at 9 n.33, Response to Question 2) (“T-Mobile emphasized that it ‘follows the same policies and practices—and provides the same level of protection—for Customer Location Information’ that it claims is not CPNI ‘as it does for Customer Location Information that is CPNI.’”). See also LOI Response at 2-6, Introduction. T-Mobile stated that its Location Aggregator program “is based upon customer consent and complies with the standards and requirements of Section 222(f) of the Act and the voluntary CTIA Guidelines.” *Id.* at 2. As T-Mobile pointed out in its LOI Response, section 222(f) governs the use, disclosure, and access to Call Location CPNI. *Id.*; see also 47 U.S.C. 222(f).

¹³² 47 U.S.C. § 222(h)(1)(A); see also, e.g., *2013 CPNI Declaratory Ruling*, 28 FCC Rcd at 9616, para. 22 n.48 (citing section 222(h)(1)(A) as “defining CPNI to include ‘information that relates to the . . . location . . . of a telecommunications service subscribed to by any customer of a telecommunications carrier’”).

¹³³ 47 U.S.C. § 222(h)(1)(A).

¹³⁴ 47 CFR § 64.2010(a).

carriers to take additional steps to protect the privacy of CPNI to the extent such additional measures are feasible for a particular carrier.”¹³⁵ Rather than listing “specific measures must implement to avoid fraudulent misappropriation of [location] data” as T-Mobile suggests,¹³⁶ the Commission granted carriers flexibility to incorporate the specific measures and practices that are consistent with their otherwise-existing “technological choices.”¹³⁷ In the *2007 CPNI Order*, the Commission also explained, for example, that “a carrier that practices willful blindness” regarding unauthorized disclosure of CPNI likely “would not be able to demonstrate that it has taken sufficient measures” to discover and protect against such conduct.¹³⁸ And in the same order, the Commission likewise identified the limitations of relying on “contractual safeguards” to address risks once CPNI has been disclosed outside the covered carrier.¹³⁹ Ultimately, while providing guidance regarding compliance with section 64.2010, the Commission also recognized that it was necessary to guard against providing bad actors “a ‘roadmap’ of how to obtain CPNI without authorization.”¹⁴⁰ Contrary to T-Mobile’s argument otherwise,¹⁴¹ this guidance provides sufficient direction for T-Mobile to understand its obligations under the rule as relevant here.¹⁴²

40. Thus, T-Mobile could reasonably have ascertained that (1) any enumeration of CPNI data elements set out by the agency was not exhaustive; (2) the customer location information at issue would be found to meet the definition of CPNI; and (3) T-Mobile would be subject to forfeiture penalties for failing to protect that customer location information as required under section 222 and the CPNI Rules.

C. T-Mobile Failed to Take Reasonable Steps to Protect CPNI

41. T-Mobile violated section 222 of the Act and section 64.2010 of the Commission’s rules by failing to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information.¹⁴³ While the Commission’s rules recognize that companies cannot prevent all data breaches, they require carriers to take reasonable steps to safeguard their customers’ CPNI and discover attempts to gain access to their customers’ CPNI. Further, as noted below, where an unauthorized disclosure has occurred—as here—the burden of production shifts to the carrier to

¹³⁵ *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64.

¹³⁶ See NAL Response at 39.

¹³⁷ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65; see also, e.g., *id.* at 6945-46, para. 34 (“we permit carriers to weigh the benefits and burdens of particular methods of possibly detecting pretexting,” which “will allow carriers to improve the security of CPNI in the most efficient manner”).

¹³⁸ *2007 CPNI Order*, 22 FCC Rcd at 6946, para. 35.

¹³⁹ *2007 CPNI Order*, 22 FCC Rcd at 6952-53, para. 49.

¹⁴⁰ *2007 CPNI Order*, 22 FCC Rcd at 6959-60, para. 65.

¹⁴¹ See NAL Response at 41-43.

¹⁴² Accordingly, we reject T-Mobile’s argument that “[s]ection 64.2010(a) is too general a standard to support the NAL’s conclusion that T-Mobile’s actions in this case were unreasonable.” *Id.* at 43. T-Mobile cites *LabMD, Inc. v. FTC*, 894 F.3d 1221, 1235-36 (11th Cir. 2018), but we are not persuaded that case calls for more here. For one, that case deals specifically with requirements for cease-and-desist orders and injunctions. See, e.g., *LabMD*, 894 F.3d at 1234-35. Further, the requirements at issue in that case lacked the supplementing guidance providing greater clarity that we find present in the case of section 64.2010 of the Commission’s rules. See, e.g., *LabMD*, 894 F.3d at 1236 (explaining that the proposed court order “is devoid of any meaningful standard informing the court of what constitutes a ‘reasonably designed’ data-security program”). Separately, T-Mobile’s reliance on contractual safeguards and its failure to investigate key details that would ensure LBS providers only were engaging in authorized uses and disclosures of CPNI appears directly at odds with guidance the Commission has provided. Even where a regulation is amenable to different interpretations, courts have rejected ‘fair notice’ claims where the regulated entity did not comply with at least some viable interpretation of the requirement. See, e.g., *21st Century Televis Joint Venture v. FCC*, 318 F.3d 192, 202 (D.C. Cir. 2003).

¹⁴³ 47 CFR § 64.2010(a); see also *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 64 (“We fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information.”).

offer evidence that it did have reasonable measures in place. Once the carrier offers some evidence of those safeguards, the rebuttable presumption falls away, and the Commission bears the burden of persuasion and must find by a preponderance of the evidence that the carrier's safeguards were unreasonable in order to find a violation of 47 CFR § 64.2010(a). T-Mobile contends that the Securus disclosures to Hutcheson did not constitute legal violations of section 222 for which T-Mobile can be held responsible.¹⁴⁴ T-Mobile then claims that it acted reasonably to protect its customers' location information both before and after the Securus disclosure came to light.¹⁴⁵ T-Mobile also argues that the Commission improperly shifted the burden of proving that such protections were reasonable to T-Mobile.¹⁴⁶ We find T-Mobile's arguments unpersuasive.

1. T-Mobile's Customer Location Disclosures to Securus Were Unauthorized and Violated Section 222

42. As an initial matter, we conclude that it was not just disclosures to Hutcheson that were unauthorized. Rather, Securus's entire location-finding service¹⁴⁷ (as detailed in paragraphs 14-15, above) was predicated on unauthorized disclosures. Consistent with T-Mobile's own description of events, the program was outside the scope of not only its approved use case, but also beyond any agreement with either Aggregator (and thus had not been reviewed by T-Mobile).¹⁴⁸ T-Mobile conceded that it was unable to distinguish location requests unrelated to the authorized use case (which involved an inmate collect-calling service).¹⁴⁹ And, to be clear, none of the records submitted in connection with the location-finding service evinced a consumer's actual opt-in consent. Therefore, every time Securus submitted a request for location information under the guise of its approved use case (a use case that required consumer consent) and T-Mobile provided the requested location information, a separate, unauthorized disclosure occurred. Separately and independently, there is no indication that the law enforcement requests were properly reviewed by Securus, as evidenced by the ready success of Hutcheson's thinly veiled ruse.¹⁵⁰ Thus, the disclosures made to Hutcheson were doubly unauthorized under section 222(c)(1). First, Securus used the façade of their approved use case to hide the true purpose and destination of the request, resulting in T-Mobile's unauthorized disclosure of location information to

¹⁴⁴ See NAL Response at 31.

¹⁴⁵ See NAL Response at 23-38.

¹⁴⁶ See NAL Response at 18-21.

¹⁴⁷ See NAL, 35 FCC Rcd at 1795-96, paras. 27-28 (citing Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018) <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>).

¹⁴⁸ See LOI Response at 9-10, Introduction; NAL, 35 FCC Rcd at 1796-97, paras. 29-30; see also, e.g., NAL Response at 17, 31..

¹⁴⁹ See NAL, 35 FCC Rcd at 1797-98, para. 34.

¹⁵⁰ See Hutcheson Sentencing Memo at 3-4 (explaining that after uploading documents that were blatantly not legal authorizations, location information was immediately transmitted with no intervening time for any documents to be reviewed for validity); NAL, 35 FCC Rcd at 1796, para. 28 (describing Hutcheson's uploading of documents that were blatantly not legal authorizations in order to obtain location information). As the NAL explained, "T-Mobile does not deny the existence of what it describes as the Securus 'Real Time Location Service,'" nor does T-Mobile "deny the abuse of that service by Hutcheson." NAL, 35 FCC Rcd at 1796, para. 29. T-Mobile likewise does not dispute here that Hutcheson was able to access location data by providing documents that were blatantly not legal authorizations as described in the NAL and confirmed in the Hutcheson Sentencing Memo, and also does not provide any reason to believe that Securus (let alone T-Mobile) could have or would have made that assessment before providing the location data. While T-Mobile states in its NAL Response that entries in a spreadsheet relied upon in the NAL "contain no information demonstrating . . . that any CPNI was disclosed without lawful authorization," NAL Response at 9, it does not elaborate on any theory of how T-Mobile possibly could have obtained the authorization it was required to obtain under section 222(c)(1) and section 64.2007(b) of the rules under the circumstances here. We thus are unpersuaded by that cursory assertion.

Securus. Second, Hutcheson likewise submitted blatantly fake requests to Securus under the guise of law enforcement, resulting in Securus's unauthorized disclosure of location information to Hutcheson.¹⁵¹

43. T-Mobile attempts to avoid this conclusion by contending that it cannot be held responsible for the unauthorized disclosures because "Securus and other third-party location-based service providers can neither be deemed 'agent[s]' of T-Mobile nor 'person[s] acting for' T-Mobile within the meaning of Section 217, at least when they misappropriate information provided by T-Mobile."¹⁵² But as the *NAL* explained, "[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers' CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law."¹⁵³ Although the *NAL* noted that "T-Mobile does not appear to argue that situation is present here,"¹⁵⁴ the totality of the record persuades us that this is, in fact, the import of the facts and T-Mobile's arguments here.

44. In making these arguments, T-Mobile appears to conflate distinct obligations it is subject to under section 222 of the Act and the Commission's rules. In particular, T-Mobile contends that "the *NAL* suggests that Section 217 of the Act would allow it to hold T-Mobile strictly liable for the acts of the third-party location-based service providers, even if T-Mobile's program reasonably protected customer location information."¹⁵⁵ Even setting aside T-Mobile's erroneous assumption about the reasonableness of its safeguards, carriers' legal duty to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI" under section 64.2010(a) of the rules is separate from the additional restriction on unauthorized use or disclosure in section 222(c)(1) of the Act and section 64.2007(b) of the Commission's rules.¹⁵⁶ Rather than incorporating some kind of *de minimis* exception or reasonableness standard, section 222(c)(1)'s statutory restriction on use and disclosure is unequivocal, as likewise reflected in section 64.2007(b) of the Commission's rules.¹⁵⁷ And as the *NAL* further explained, "the obligation to protect CPNI falls on *telecommunications carriers*; the carrier must obtain customer approval to use, disclose, or permit someone else to access the CPNI for any purpose not strictly related to the purpose for which it was provided to the carrier."¹⁵⁸ "If T-Mobile was relying on third parties to satisfy its obligations to obtain consent, then it is [as] liable for those third parties' failures as it would be if they had been the failures of T-Mobile itself. If not, then T-Mobile effectively granted those third parties the capability to access the CPNI of its customers without customer approval."¹⁵⁹ T-Mobile does not contend that it directly obtained the required approval from the customers whose location information it was sharing—nor could it, given that its entire location-based services program was premised on the LBS providers obtaining customer authorization.¹⁶⁰ And T-Mobile now contends that under the circumstances at issue here, "Securus and other third-party location-based service providers can neither be deemed 'agent[s]' of T-Mobile nor 'person[s] acting for' T-Mobile within the meaning of

¹⁵¹ See Hutcheson Sentencing Memo at 3-4 (Hutcheson "uploaded legally defective search warrants that either did not authorize the acquisition of location data, were unsigned, or had no connection to the targeted phone user" and in "most of these instances . . . even notarized his own signature."); see also *NAL*, 35 FCC Rcd at 1796, para. 28.

¹⁵² *NAL* Response at 31.

¹⁵³ *NAL*, 35 FCC Rcd at 1803, para. 54 n.145.

¹⁵⁴ *NAL*, 35 FCC Rcd at 1803, para. 54 n.145.

¹⁵⁵ *NAL* Response at 31.

¹⁵⁶ 47 U.S.C. § 222(c)(1); 47 CFR § 64.2007(b).

¹⁵⁷ We note that T-Mobile does not contend that it literally would not have been possible to avoid the disclosures, so our interpretation does not demand the impossible of T-Mobile or any other carrier.

¹⁵⁸ *NAL*, 35 FCC Rcd at 1802, para. 52.

¹⁵⁹ *NAL*, 35 FCC Rcd at 1803, para. 56.

¹⁶⁰ See, e.g., *NAL*, 35 FCC Rcd at 1792-93, paras. 16-17; *NAL* Response at 24-26.

Section 217.”¹⁶¹ Therefore, consistent with the *NAL*, we find that the Securus disclosures, including those made to Hutcheson, were unauthorized and T-Mobile was appropriately admonished in relation to such disclosures.

2. T-Mobile’s Protection of Customer Location Information Was Unreasonable Both Before and After the Securus/Hutcheson Disclosures

45. The Commission affirms the *NAL* and finds that T-Mobile failed to take reasonable measures to discover and protect against attempts to gain unauthorized access to its customers’ location information. As fully laid out in the *NAL*, the record not only shows that T-Mobile did not have reasonable protections in place prior to the 2018 *New York Times* article detailing the Securus/Hutcheson breaches,¹⁶² but also that T-Mobile failed to promptly address its demonstrably inadequate CPNI safeguards after the Securus/Hutcheson disclosures.¹⁶³

46. T-Mobile attempts to excuse its unreasonable practices by cataloging the steps it did take before and after the *New York Times* article. T-Mobile argues that, prior to the Securus disclosure, its efforts conformed to the CTIA Guidelines for ensuring customer consent to the use of location data.¹⁶⁴ Specifically, T-Mobile states that its safeguards included: “numerous contractual, procedural, and technical safeguards designed to protect the privacy of customer location data; to ensure that customer consent was obtained; and to limit uses of the data to comply with the Act and industry best practices established in the CTIA LBS Guidelines.”¹⁶⁵

47. The safeguards that T-Mobile had in place before the Securus disclosure were not reasonable. As fully explained in the *NAL*:

[The CTIA] guidelines focus on best practices for notice and consent by location-based service providers. But they do not include best practices recommendations for carriers that sell access to their customers’ location information to location-based service providers. For example, they do not offer guidance to carriers on how to assure that location-based service providers comply with a contractual obligation to access location information only after furnishing proper notice and receiving customer consent.¹⁶⁶

As for the other safeguards that T-Mobile implemented to protect its customers’ location information against unauthorized access, these safeguards relied almost entirely upon contractual agreement, passed on to location-based service providers through an attenuated chain of downstream contracts.¹⁶⁷ To the extent that T-Mobile’s safeguards relied on trusting Aggregators and location-based service providers to honor their contractual commitments, consistent with the *NAL* we find that “such trust alone was” not “a reasonable safeguard here,” particularly in light of the regulatory history regarding attempts to obtain unauthorized access to CPNI in general and in the case of T-Mobile location-based data in particular.¹⁶⁸

¹⁶¹ *NAL* Response at 31.

¹⁶² See *NAL*, 35 FCC Rcd at 1804-07, paras. 58-68.

¹⁶³ See *NAL*, 35 FCC Rcd at 1807-10, paras. 69-78.

¹⁶⁴ See *NAL* Response at 7, 23, 24, 25, 27, 28-29, 42, 54, 55.

¹⁶⁵ *NAL* Response at 23.

¹⁶⁶ *NAL*, 35 FCC Rcd at 1806, para. 65 n.170.

¹⁶⁷ See *NAL*, 35 FCC Rcd at 1804-06, paras. 61-65.

¹⁶⁸ *NAL*, 35 FCC Rcd at 1807, para. 68. T-Mobile contends that “it is the *Commission*’s burden to show that T-Mobile did *not* take steps to ensure that its contracts were being followed.” *NAL* Response at 24-25. But our analysis does not turn on the theory that T-Mobile did not take any steps to ensure that its contracts were being followed. Setting aside broader questions regarding burden shifting that we address in the following section, see *infra* section III.C, the regulatory history, bolstered by the facts and our analysis of the contractual protections

(continued....)

48. To enforce these safeguards, T-Mobile would have needed to take steps to determine whether they were actually being followed. Further, T-Mobile would have had to have a way of distinguishing between a legitimate request for customer location information (i.e., made pursuant to valid consumer consent) and an illegitimate one (e.g., the Securus/Hutcheson requests absent valid customer consent). Although the Commission requested that T-Mobile describe its efforts to verify that LBS providers obtained valid customer consent for related location requests,¹⁶⁹ nothing that T-Mobile has provided shows that it made any meaningful efforts or that it could effectively distinguish between valid and unauthorized requests for location information. To the extent that T-Mobile seeks to rely on certain risk assessments conducted in 2016 and 2018, as the *NAL* explained, T-Mobile “withheld the results of those assessments as privileged,” and even while conceding “that both reports made recommendations to ‘enhance program governance,’” it only provided “vague assertions” about the underlying concerns and any changes it made, rendering it “impossible for us to conclude that T-Mobile took meaningful steps to protect customer location information among the [75] entities to which it sold such access.”¹⁷⁰ Further, the LocateUrCell, Securus, and MicroBilt breaches persuade us that the assessments either were not designed to detect vulnerabilities in the consent mechanism or failed meaningfully to do so. And while T-Mobile cites those risk assessments again in response to the *NAL*, it did not provide new information that would enable a different assessment on the record before us.¹⁷¹

49. T-Mobile also argues that it “took decisive action” after the *New York Times* article, and that the Company’s actions were preferable to taking the steps suggested in the *NAL*, as those steps would have resulted in “[d]isrupting and even jeopardizing people’s lives by immediately interfering with . . . valuable [LBS] services.”¹⁷² We disagree. The issue here is not whether there are any beneficial services offered by LBS providers, but whether T-Mobile reasonably protected its customers’ location information. And even under T-Mobile’s reasoning, the Company would have no excuse for its failure to promptly terminate every other non-critical LBS provider. In any event, because of the sensitive personal information involved, the benefits of LBS must be weighed against the risks; here, the risks were grave, particularly because T-Mobile did not have a reliable way of confirming customer consent. The Commission considered T-Mobile’s arguments, but finds they are outweighed by these risks.

50. And any further claim by T-Mobile that its contractual safeguards were effective are undermined by the inexorable fact that after the Securus disclosure, T-Mobile was unable to determine the universe of affected customers because it “claims that Securus has denied its request to identify the individuals whose customer location information may have been obtained without consent”¹⁷³ As the Commission said in the *NAL*, “[i]f T-Mobile cannot compel Securus’s cooperation with its investigation

employed here, leads us to conclude that T-Mobile’s attempt to rely on such measures fall short of what is required under section 64.2010(a), at least absent a strong showing regarding T-Mobile enforcement of those provisions that would overcome the contrary evidence. As explained below, the record does not include such a showing here.

¹⁶⁹ See Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Luisa Lancetti, Director, Federal Regulatory, T-Mobile USA, Inc. at 3, Question 5.e (Sept. 13, 2018) (on file in EB-TCD-18-00027702).

¹⁷⁰ *NAL*, 35 FCC Rcd at 1806, para. 67; see also *id.* at 1808, para. 73 (discussing other grounds for discounting the risk assessments).

¹⁷¹ See *NAL* Response at 26, 32. Without meaningful details about the risk assessments, the Commission cannot rationally conclude that they either helped render T-Mobile’s safeguards reasonable or otherwise demonstrated that those safeguards were reasonable either before or after the May 2018 *New York Times* article, particularly in light of the multiple breaches discussed in the *NAL*. See, e.g., *NAL*, 35 FCC Rcd at 1794-98, paras. 24-36. We thus reject T-Mobile’s claim that our failure to give more weight to the risk assessments effectively imposes a higher standard than the reasonableness standard imposed under section 64.2010(a) of the Commission’s rules. *NAL* Response at 26.

¹⁷² *NAL* Response at 32-35.

¹⁷³ *NAL*, 35 FCC Rcd at 1808, para. 72.

into unauthorized access to its customers' location information, it cannot say that the same contract-based system actually protects such information from unauthorized access by other entities. Whatever Securus's justification for denying T-Mobile's request, its refusal to cooperate is further evidence of the fact that T-Mobile disclosed CPNI to a third party over which it had little or no control or authority."¹⁷⁴

51. We also are unpersuaded by T-Mobile's efforts to tout perceived benefits of aspects of its location-based services safeguards. For example, T-Mobile notes that it restricted the number of entities with direct access to its customers' location information and criticizes what it sees as "[t]he NAL's casual dismissal of this important security measure."¹⁷⁵ T-Mobile also asserts benefits from "[g]iving location-based service providers the freedom to tailor notice to be most suited for their respective services."¹⁷⁶ But T-Mobile fails to appreciate that these approaches do not yield unqualified benefits, but carry with them various risks—risks that T-Mobile ineffectually sought to address largely “through provisions passed down through an attenuated chain of downstream contracts.”¹⁷⁷ And as the *NAL* explained, T-Mobile's assignment of a campaign-specific ID for access to its Location APIs (a type of software) was “simply a technology-based variant of the honor system on which T-Mobile's other safeguards depended. As T-Mobile learned with the LocateUrCell incident in July 2017, where authorized and unauthorized services used the same campaign-specific ID, ‘T-Mobile was not able to readily distinguish the unauthorized data requests from the authorized ones.’”¹⁷⁸

52. Nor are we persuaded that information about location sharing on T-Mobile's website renders its safeguards reasonable.¹⁷⁹ None of the cited information would have made T-Mobile customers aware of the risk that their location information would be shared without their knowledge—let alone without their consent—as occurred in the Securus and Hutcheson breaches. Nor does it empower consumers to do anything to guard against such risk themselves (even assuming *arguendo* that could be a component of meeting the *carrier's* obligation to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI under section 64.2010(a)).

53. Likewise, T-Mobile's safeguards after the Securus disclosure were also unreasonable. T-Mobile became keenly aware of the inadequacy of its safeguards after the May 2018 *New York Times* article, and again after Securus's resistance to T-Mobile's subsequent investigation. Nonetheless, T-Mobile did not and cannot demonstrate that its safeguards were made reasonable in the months that followed the 2018 *New York Times* article. In fact, rather than promptly implementing reasonable safeguards, T-Mobile continued to sell access to its customers' location information under (for all intents and purposes) the *same system* that was exploited by Securus and Hutcheson.¹⁸⁰

54. We reject T-Mobile's attempt to dispute that the reports of the Securus and Hutcheson breaches should have made T-Mobile aware of the need for greater safeguards.¹⁸¹ T-Mobile observes that media reports are not always completely accurate and are treated as inadmissible hearsay under the Federal Rules of Evidence and likewise have at times been rejected as reliable evidence by the

¹⁷⁴ *NAL*, 35 FCC Rcd at 1808, para. 72.

¹⁷⁵ *NAL* Response at 24.

¹⁷⁶ *NAL* Response at 25.

¹⁷⁷ *NAL*, 35 FCC Rcd at 1804-05, para. 61; *see also, e.g., id.* at 1085-86, para. 64 (“This arrangement, in other words, depended on T-Mobile trusting that the Aggregators obtained the appropriate consent and the Aggregators, in turn, relying on the seemingly unverified assertions of the location-based service providers to whom they sold access to customer location data.”).

¹⁷⁸ *NAL*, 35 FCC Rcd at 1806, para. 66. This flaw was again exploited after the Securus/Hutcheson breach by MicroBilt. *See, e.g., NAL*, 35 FCC Rcd at 1807, para. 71.

¹⁷⁹ *See NAL* Response at 27.

¹⁸⁰ *See NAL*, 35 FCC Rcd at 1806, para.69.

¹⁸¹ *See NAL* Response at 21-22, 35-36, 39-40.

Commission.¹⁸² But whatever one might say about media reports in other contexts, T-Mobile did, in fact, view the May 2018 *New York Times* article as sufficiently reliable to call for some response, explaining that “T-Mobile took decisive action within 24 hours of the *New York Times* article to eliminate the ability of Securus to obtain location information for any purpose.”¹⁸³ Nor are we persuaded that evidentiary standards governing admissibility in federal court or the statutory standard required for showings in Commission licensing proceedings should govern whether material provides a sufficient basis for a carrier to be on notice of vulnerabilities in its measures to discover and protect against unauthorized disclosures of CPNI.¹⁸⁴ Nothing in the 2007 CPNI Order that adopted section 64.2010(a) of the Commission’s rules suggests that the reasonableness standard was intended to be interpreted based on those other legal frameworks. Indeed, newspaper articles were among the sources of evidence relied upon by the Commission in that proceeding.¹⁸⁵ The case for T-Mobile’s ability to ignore the May 2018 *New York Times* article despite its obligations under section 64.2010(a) to discover and protect against breaches is especially weak here, where the *New York Times* article was based in part on charges filed against Hutcheson in state and federal court.¹⁸⁶

55. Although T-Mobile worked towards implementing an enhanced notice and consent mechanism, this mechanism was never deployed.¹⁸⁷ According to T-Mobile, the mechanism was never deployed because the Aggregators were unable to create the platform T-Mobile’s approach would have relied upon, and T-Mobile “could not readily develop a process to obtain customer authorization directly from its customers.”¹⁸⁸ But the mere fact that T-Mobile was working on new processes is not sufficient to satisfy its obligation to “take reasonable measures to discover and protect against attempts to gain

¹⁸² See NAL Response at 21-22.

¹⁸³ NAL Response at 32. Likewise, T-Mobile found the media reliable enough to provide sufficient grounds to act in other situations, as well. See, e.g., NAL, 35 FCC Rcd at 1797-98, paras. 33-34 (explaining that “[o]n January 3, 2019, T-Mobile learned from a *Motherboard* reporter that MicroBilt, a credit reporting and consumer finance company, may have been accessing and disclosing customer location information in a manner inconsistent with the approval that T-Mobile had given to access T-Mobile’s customers’ location information,” and that the next day T-Mobile confirmed that Zumigo “had suspended transmission of any T-Mobile customer location information to MicroBilt,” while T-Mobile also “permanently disabled access to its customers’ location information by Zumigo for the purpose of transmitting it to MicroBilt”).

¹⁸⁴ See NAL Response at 21-22 (citing cases applying the Federal Rules of Evidence and Commission licensing decisions).

¹⁸⁵ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6933-35, para. 12 & n.31 (2007) (2007 CPNI Order) (stating that “[t]he carriers’ record on protecting CPNI demonstrates that the Commission must take additional steps to protect customers from carriers that have failed to adequately protect CPNI,” and citing, among other things, Frank Main, *Anyone Can Buy Cell Phone Records: Online Services Raise Security Concerns for Law Enforcement*, Chi. Sun Times, Jan. 5, 2006, at A3; Frank Main, *Cell Call Lists Reveal Your Location: Anybody Can Pay to Track Where You Used Phone*, Chi. Sun Times, Jan. 19, 2006, at A3; and Frank Main, *Blogger Buys Presidential Candidate’s Call List: “Nobody’s Records Are Untouchable,” as \$90 Purchase Online Shows*, Chi. Sun-Times, January 13, 2006, at A10.); *id.* at 6933-35, para. 12 & n.37 (stating that “companies have sued dozens of people whom they accuse of fraudulently obtaining phone records,” and citing, among other things, Matt Richtel and Miguel Helft, *An Industry Is Based on a Simple Masquerade*, N.Y. Times, Sept. 11, 2006, at C1).

¹⁸⁶ See, e.g., Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates’ Calls Could Track You, Too*, N.Y. Times (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html> (“Thousands of jails and prisons across the United States use a company called Securus Technologies to provide and monitor calls to inmates. But the former sheriff of Mississippi County, Mo., used a lesser-known Securus service to track people’s cellphones, including those of other officers, without court orders, according to charges filed against him in state and federal court. . . .”).

¹⁸⁷ See NAL Response at 32-33.

¹⁸⁸ See NAL Response at 33.

unauthorized access to CPNI.”¹⁸⁹ Until the new measures actually are in place, they cannot enable a carrier to “discover and protect against” the harms that are the target of that rule—and thus, they cannot be relied upon to satisfy that rule. Nor does the time and effort involved in T-Mobile’s work on new processes render the procedures that remained in place in the meantime “reasonable” under that rule, given their glaring weaknesses. Thus after considering all of the data security measures that T-Mobile implemented in response to the Securus disclosure¹⁹⁰ we conclude that these measures were inadequate.

56. T-Mobile further argues that the Commission fails to appropriately account for the fact that the LBS providers “were offering valuable services.”¹⁹¹ We disagree. The issue here is not whether there are any beneficial services offered by LBS providers, but whether T-Mobile reasonably protected its customers’ location information. The decision to continue operating under its faulty safeguards after the Securus/Hutcheson breach came to light is all the more dubious given that it was preceded by the LocateUrCell incident, that apparently also “involved a location-based service provider customer of LocationSmart that had been authorized to access T-Mobile customer location information misusing that access to obtain the information for a different purpose, contrary to its approved use case, without customer consent, and without T-Mobile’s knowledge or approval.”¹⁹² And there is no question of the risks that remained in T-Mobile’s measures after the May 2018 *New York Times* article, given the subsequent MicroBilt breach, as discussed in the *NAL*.¹⁹³ As already noted in paragraph 49 and note 171, above, because of the sensitive personal information involved, the risks were grave, particularly because T-Mobile demonstrably did not have a reliable way of confirming customer consent.

57. The *NAL* listed numerous steps that could have been taken to squarely address the proven vulnerability, up to and including deploying enhanced measures to verify consumer consent (even directly verifying consumer consent) and shutting down the LBS program.¹⁹⁴ T-Mobile contends that the option identified in the *NAL* of learning the full scope of the breach is at odds with the suggestion that providers should have acted within 30 days, but T-Mobile offers no explanation of why that would be the case.¹⁹⁵ It

¹⁸⁹ 47 CFR § 64.2010(a).

¹⁹⁰ See *NAL* Response at 31-37.

¹⁹¹ *NAL* Response at 35. T-Mobile further asserts that these other companies both “were offering valuable services and . . . were not implicated in any way by the Securus incident.” *NAL* Response at 35. Notably, however, T-Mobile’s measures were not what identified the unauthorized disclosures in the case of Securus and Hutcheson. Thus, in the face of what we see as the failing in a fundamental aspect of T-Mobile’s safeguards, we reject the theory that the reasonableness of those measures can be inferred from the fact that even more unauthorized disclosures have not been publicly identified.

¹⁹² *NAL*, 35 FCC Rcd at 1807, para. 70.

¹⁹³ *NAL*, 35 FCC Rcd at 1808-09, para. 74. T-Mobile argues that in the MicroBilt breach “the owner of the phone there actually *consented* to the activity at issue.” *NAL* Response at 50. But that conflates the consent the customers provided to the author of the *Motherboard* article to test the protection of their location information with the opt-in consent T-Mobile was obligated to obtain (either directly or through its agents) before using, disclosing, or permitting access to that information—the latter of which was absent. See *NAL*, 35 FCC Rcd at 1797-98, paras. 33-36. The MicroBilt breach further highlights the flaw in T-Mobile’s emphasis that it “completely terminated Securus’s ability to access customer location information one day after the *New York Times* article was published, and it also terminated 3CInteractive’s access in support of Securus.” *NAL* Response at 18. Those actions did not improve the safeguards for consumers whose location information could be disclosed under the location data sharing arrangements that remained in place.

¹⁹⁴ See *NAL*, 35 FCC Rcd at 1807-10, paras. 70-78.

¹⁹⁵ See *NAL* Response at 35-36. T-Mobile argues that “[p]rior to this *NAL*, the Commission had never stated that a carrier would have just 30 days to fully investigate and implement its response to information about a misappropriation of location data.” *Id.* at 39. As explained in note 121, above, the 30-day period cited in *NAL* was not a deadline but a grace period. The Commission could have, but chose not to, assess a fine during that 30-day interim. However, because T-Mobile’s existing data security practices were unreasonable both before and after the
(continued....)

also contends that the Commission has not adequately explained why the investigatory efforts that T-Mobile did undertake were inadequate.¹⁹⁶ But insofar as those efforts involve T-Mobile's review of a risk assessment that was commissioned and initiated before it became aware of the Securus breach,¹⁹⁷ the details of which it also has not disclosed,¹⁹⁸ we are not persuaded that they were likely to—or did—meaningfully illuminate the steps T-Mobile needed to take in response to the specific vulnerabilities laid bare by the Securus and Hutcheson breaches. Nor are we persuaded of the adequacy of discussions that T-Mobile states that it had with Securus, given evidence that T-Mobile was unable to get Securus to cooperate fully in its investigations.¹⁹⁹ We also are unpersuaded by T-Mobile's argument that it was not a potentially viable option for it to expeditiously implement enhanced measures to verify consent, such as a direct verification system.²⁰⁰ The grounds for that claim are not demonstrated by the document it cites regarding its efforts to implement a direct consent verification system.²⁰¹ This is underscored by T-Mobile's decision to continue its LBS program and only eventually (and belatedly) expedited cutting off services, and even then it reserved "services such as roadside assistance and medical-alert services" until the end.²⁰² T-Mobile could have decided to cut off the other services from the start, which would appear to have made the task of taking on direct verification much more discrete and manageable. But ultimately, as the *NAL* observes, "the surest safeguard to protect its customers' CPNI would have been for T-Mobile to expeditiously terminate its location-based service program."²⁰³

58. Rather than taking definitive steps to remedy the obvious LBS program issues, T-Mobile instead took piecemeal steps. Moreover, the steps T-Mobile took did not rectify the systemic vulnerabilities at the heart of its LBS program—including relying on third parties to obtain customer consent for the disclosure of location information and failing to verify the validity of that consent.

59. T-Mobile's attempts to characterize the Commission as relying on a strict liability-type approach fall short, as well.²⁰⁴ Section 64.2010 of the rules requires only reasonable measures—not perfect ones—but that is not enough to help T-Mobile here. Contrary to T-Mobile's suggestion, this is not a situation where the Commission is relying on 20/20 hindsight after a breach to find a violation of section 64.2010(a) of the rules based on any shortcoming in a carrier's measures, no matter how small, that results in a strict liability approach which is contrary to the reasonableness standard reflected in that rule.²⁰⁵ Rather, we have carefully examined T-Mobile's procedures, including the fundamental flaws in

May 2018 article (the article having merely *exposed* those unreasonable practices), the Commission could have assessed a fine *for every single day* (both before and after the Securus/Hutcheson disclosures) such unreasonable practices were in place. Instead, the Commission used its discretion and gave T-Mobile a grace period to either end the program or reform its practices.

¹⁹⁶ See NAL Response at 35-36.

¹⁹⁷ See *NAL*, 35 FCC Rcd at 1794, para. 22.

¹⁹⁸ See *supra* para. 48. In connection with the *NAL*'s identified option of taking steps to determine whether the Securus incident was indicative of a broader vulnerability, T-Mobile also states that "it immediately began considering ways to limit the scope of the program and streamline the customer-consent process." NAL Response at 36. But those are measures that might have been better informed by an assessment of whether the Securus incident was indicative of a broader vulnerability—not steps that could have enabled an assessment of the nature of that vulnerability in the first instance.

¹⁹⁹ *NAL*, 35 FCC Rcd at 1808, para. 72.

²⁰⁰ See NAL Response at 36-37.

²⁰¹ See NAL Response at 33 & n.97.

²⁰² NAL Response at 34.

²⁰³ *NAL*, 35 FCC Rcd at 1809-10, para. 77.

²⁰⁴ See NAL Response at 22, 32, 34.

²⁰⁵ See NAL Response at 22-23.

those safeguards, such as the fact that across two Aggregators and three different LBS providers (LocateUrCell, Securus, and MicroBilt) T-Mobile was “unable to differentiate requests for customer location information that were made for purposes authorized by T-Mobile from those that were not.”²⁰⁶ Our assessment under section 64.2010(a) thus is a straightforward evaluation of reasonableness, consistent with the text of the rule.

60. We also reject T-Mobile’s arguments regarding the validity of its use of an approach that relied in part on implicit consent. Section 222(c)(1) provides in pertinent part that, absent one of the exceptions specified in that provision, a carrier may not “use, disclose, or permit access to individually identifiable” CPNI “[e]xcept . . . with the approval of the customer.”²⁰⁷ Section 64.2007(b) of the Commission’s rules specifies what customer approval is required to comply with section 222(c)(1).²⁰⁸ In particular, where customer approval is required, it generally must take the form of “opt-in approval” unless the carrier is using individually identifiable CPNI “for the purpose of marketing communications-related services to that customer” or is “disclos[ing] its customer’s individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents and its affiliates that provide communications-related services.”²⁰⁹ Because the location information at issue here does not fall within the scenarios where opt-out customer approval is allowed, as explained in the *NAL* opt-in approval is required here under section 64.2007(b) of the Commission’s rules.²¹⁰ And as the *NAL* also explained, “[p]ursuant to our rules, opt-in consent means that the customer has given ‘affirmative, express consent’ after being given appropriate notice of the carrier’s request.”²¹¹ This does not allow for the use of implicit consent.

61. Commission precedent reinforces our understanding that implicit consent is not a valid option for obtaining opt-in consent. Where the Commission has referred to the notion of implicit or implied consent in connection with CPNI, it has done so in contexts that are very distinct from opt-in approval processes. In some cases, the Commission has referred to consent as implicit or implied where it is addressing the scope of provisions in section 222(c)(1) identifying situations where customer approval is *not* required. In that context, the Commission has stated, for example, that “the language of section 222(c)(1)(A) and (B) reflects Congress’ judgment that customer approval for carriers to use, disclose, and permit access to CPNI can be *inferred* in the context of an existing customer-carrier relationship” insofar as those provisions are concerned.²¹² Where the Commission referred to implicit or implied approval in connection with a customer approval process, it did so in connection with opt-out—

²⁰⁶ *NAL*, 35 FCC Rcd at 1720, para. 70.

²⁰⁷ 47 U.S.C. § 222(c)(1).

²⁰⁸ 47 CFR § 64.2007(b).

²⁰⁹ 47 CFR § 64.2007(b).

²¹⁰ *NAL*, 35 FCC Rcd at 1805, para. 63.

²¹¹ *NAL*, 35 FCC Rcd at 1805, para. 63 (citing 47 CFR §§ 64.2003(k), 64.2008).

²¹² *Implementation of the Telecommunications Act of 1996, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8080, para. 23 (1998) (*CPNI Second Report and Order*); *see also, e.g., id.* at 8080, para. 24 (“insofar as the customer consent in sections 222(c)(1)(A) and (B) is inferred rather than based on express customer direction, we conclude that Congress intended that implied customer approval be restricted solely to what customers reasonably understand their telecommunications service to include”); *2007 CPNI Order*, 22 FCC Rcd at 6931-32, para. 8 n.16 (“As the Commission discussed in the *CPNI Order*, ‘the language of section 222(c)(1)(A) and (B) reflects Congress’ judgment that customer approval for carriers to use, disclose, and permit access to CPNI can be inferred in the context of an existing customer-carrier relationship. This is so because the customer is aware that its carrier has access to CPNI, and, through subscription to the carrier’s service, has implicitly approved the carrier’s use of CPNI within that existing relationship.’”).

rather than opt-in—approval.²¹³ Thus, Commission precedent supports our view that implicit approval is not consistent with the Commission’s requirement of opt-in approval under section 64.2007(b) of the rules.

62. Section 222(f) of the Act likewise supports this conclusion. As the Commission explained in the *NAL*, “[i]n the Wireless Communications and Public Safety Act of 1999, Congress amended section 222 to expressly allow carriers to provide call location information to 911 call centers, to expressly include location information in the definition of CPNI, and to require a user’s express prior authorization before location information could be used for commercial purposes.”²¹⁴ Among those amendments was the enactment of section 222(f)(1), which, as relevant here, specifies that “[f]or purposes of subsection (c)(1) [of section 222], without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to” call location information (as subset of CPNI location information).²¹⁵ Section 222(f)(1) requires that customer authorization be both “express” and “prior,” and thus narrows the scope of customer authorization that can permissibly serve as a prerequisite for a carrier’s use, disclosure, or permitting access to call location information under section 222(c)(1). As explained in the *NAL*, although the Commission did not initially adopt rules to implement the newly-enacted section 222(f), it “found that section 222(f)’s requirement of ‘express prior authorization’ left ‘no doubt that a customer must explicitly articulate approval before a carrier can use that customer’s location information.’”²¹⁶ Further, as the *NAL* observed, “[f]ive years later, the Commission found that the provisions of section 222, without implementing regulations, were inadequate to protect consumers—hence the adoption of new rules in the *2007 CPNI Order*. And nothing in that order suggests that the Commission intended to carve out location-based CPNI (let alone the ‘call location information’ discussed in section 222(f)) from those protections” based on the 2002 decision that rules had not been needed at that time.²¹⁷ In sum, whether under the Commission’s rules or the

²¹³ See, e.g., *Implementation of the Telecommunications Act of 1996, et al.*, Clarification Order and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 16506, 16511, para. 11 (2001) (referring to “‘implicit approval’ (through opt-out)”; *CPNI Second Report and Order*, 13 FCC Rcd at 8165, para. 142 (“because carriers generally were not subject to an express prior approval requirement for the use of CPNI under *Computer III*, but rather, were permitted to share CPNI based only on notice and opt-out, the approval that was implied under such an approach was based largely on a customer’s notification of his or her CPNI rights”).

²¹⁴ *NAL*, 35 FCC Rcd at 1787, para. 6 (footnote omitted).

²¹⁵ 47 U.S.C. § 222(f)(1).

²¹⁶ *NAL*, 35 FCC Rcd at 1787, para. 6 (quoting *Request by Cellular Telecommunications and Internet Association to Commence Rulemaking to Establish Fair Location Information Practices*, Order, 17 FCC Rcd 14832, 14834, para. 5 (2002) (*2002 Order Denying Petition for Rulemaking*)). In support of this interpretation, the Commission cited the provision’s legislative history. *2002 Order Denying Petition for Rulemaking*, 17 FCC Rcd at 14834, para. 5 n.16. We note that this accords with common dictionary definitions of “express,” as well. See, e.g., *The American Heritage Dictionary*, Fourth Ed., at 303 (Bantam Dell Pub. 2001) (defining “express,” among other things, to mean “Definitely and clearly stated. See Syns at **explicit**.”); *Collins English Dictionary*, Millennium Ed., at 544 (HarperCollins Pub. 1998) (defining “express,” among other things, to mean “clearly indicated or shown; explicitly stated”); *Merriam-Webster’s Deluxe Dictionary*, Tenth Collegiate Ed., at 645 (Merriam-Webster Pub. 1998) (defining “express,” among other things, to mean “directly, firmly, and explicitly stated”); *The Oxford Paperback Dictionary & Thesaurus*, at 263 (Oxford Univ. Press 1997) (defining “express,” among other things, to mean “definitely stated”).

²¹⁷ *NAL*, 35 FCC Rcd at 1801, para. 48. T-Mobile states that call location information was not covered by the CPNI rules enacted in 2002. See *NAL Response* at 5 n.7, 40 n.118. However, the Notice of Proposed Rulemaking that led to the *2007 CPNI Order* observed when discussing the section 222(c)(1) requirement of customer consent that Congress subsequently enacted section 222(f) adopting a express prior consent requirement for call location information under section 222(c)(1). *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, et al*, Notice of Proposed Rulemaking, 21 FCC Rcd 1782, 1784, para. 4 n.8 (2006). The Commission included a similar statement in the *2007 CPNI Order*. *2007 CPNI Order*, 22 FCC Rcd at 6931, para. 6 n.11. Consequently, we conclude that the (continued....)

Commission's interpretation of section 222(f) itself, explicit consent is required for the use, disclosure, and provision of access to call location information under section 222(f).

63. We are unpersuaded by T-Mobile's efforts to justify its interpretation of its obligations under section 222 of the Act and the Commission's implementing rules by drawing from sources outside that legal framework. For example, T-Mobile cites 2012 recommendations from the FTC regarding privacy.²¹⁸ Not only is the FTC's legal regime governing privacy distinct from that applicable to CPNI,²¹⁹ but the 2012 recommendations did not even purport to describe the state of existing law. Instead, the 2012 recommendations were "intended to articulate best practices" that "can be useful to companies as they develop and maintain processes and systems to operationalize privacy and data security practices within their businesses," to "assist Congress as it considers privacy legislation," and "[t]o the extent the framework goes beyond existing legal requirements, the framework is not intended to serve as a template for law enforcement actions or regulations under laws currently enforced by the FTC."²²⁰ Whatever the possible pros and cons of those principles as a policy matter (at least in the marketplace as it existed in 2012), we do not find them instructive in interpreting the language of section 222 of the Act and the Commission's implementing rules.

64. We also reject T-Mobile's attempts to defend its reliance on implicit consent based on "the CTIA LBS Guidelines and industry practice."²²¹ Even beyond the fact that those are not binding on the Commission's interpretation of section 222 of the Act and the implementing rules, T-Mobile cites nothing in support of its claim regarding "industry practice" regarding the CTIA Guidelines themselves.²²² Furthermore, as already explained, those guidelines "focus on best practices for notice and consent by location-based service providers."²²³ Where the carrier's CPNI is at issue, the carrier bears the

opt-in rules governing customer consent enacted in the 2007 *CPNI Order* are best understood as applying to the full range of scenarios where section 222(c)(1) applies, including to call location information covered by section 222(f)(1). Even assuming *arguendo* that customer authorization requirements for call location information are governed by section 222(f)(1) of the Act rather than the specific opt-in requirements specified in section 64.2007(b) of the rules, the functional result is the same for T-Mobile. The 2002 precedent was clear that "section 222(f)'s requirement of 'express prior authorization' left 'no doubt that a customer must explicitly articulate approval before a carrier can use that customer's location information.'" 2002 *Order Denying Petition for Rulemaking*, 17 FCC Rcd at 14834, para. 5. And the Commission's precedent—describing "implicit" consent as allowed only in scenarios like section 222(c)(1)(A) and (B) where consent is not required at all, or in scenarios where the Commission has allowed opt-out consent—demonstrates that "explicitly articulat[ing] approval" only is incompatible with implicit consent. *See supra* para. 61. Finally, we reiterate that section 222(f)(1) only applies to a subset of CPNI location information—namely, call location information.

²¹⁸ See NAL Response at 29-30 (citing FTC, *Protecting Consumer Privacy in an Era of Rapid Change, Recommendations for Businesses and Policymakers*, at 36-48 (Mar. 2012) (*FTC Privacy Recommendations*), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protectingconsumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>).

²¹⁹ The aspirational statement of individual members of multi-member agencies regarding FCC-FTC coordination on privacy does not give rise to any binding legal obligation governing the Commission's interpretation of section 222 and the implementing rules in a manner that accords with policies under the FTC's privacy authority. *See* NAL Response at 30 n.92 (citing Press Release, FTC, *Joint Statement of FCC Chairman Ajit Pai and Acting FTC Chairman Maureen K. Ohlhausen on Protecting American's Online Privacy*, (rel. Mar. 1, 2017), available at <https://www.fcc.gov/document/fcc-chairman-ftc-chairman-protecting-americans-online-privacy>). In any event, we are not persuaded to assume that the decade-old *FTC Privacy Recommendations* document (or another decade-old privacy document issued by the White House and cited by T-Mobile) continues to reflect the FTC's—or any federal entity's—current views regarding privacy. *See* NAL Response at 30-31 & n.93.

²²⁰ *FTC Privacy Recommendations* at iii.

²²¹ NAL Response at 28.

²²² NAL Response at 28.

²²³ *NAL*, 35 FCC Rcd at 1806, para. 65 n.170.

responsibility of ensuring compliance with its obligations under section 222 of the Act and the Commission's implementing rules before that CPNI is used or disclosed or access to it is permitted. The CTIA Guidelines do not speak to that question, and thus even by their terms do not address the legal question at issue here.²²⁴

65. Further, T-Mobile cites three Commission decisions that T-Mobile alleges demonstrate that the Commission has allowed implicit consent as a way to satisfy the obligation of "prior express consent" under the Telephone Consumer Protection Act (TCPA).²²⁵ However, in one of those decisions the Commission was focused on assessing the *scope* of prior express consent—as opposed to determining whether prior express consent had been provided in the first instance (which would be more analogous to the operative question here).²²⁶ The remaining two decisions turn on the Commission's analysis in the *1992 TCPA Order*.²²⁷ That analysis turned entirely on the Commission's assessment of the legislative history of the TCPA, thus further undercutting any grounds to rely on it by analogy in this distinct legal context.²²⁸

66. As discussed in the *NAL*, moreover, even under T-Mobile's theory that implicit consent can be permissible, there were many practical problems that plagued in any implementation of such an approach in its LBS program. Consistent with the *NAL*, we are unpersuaded that "a location-based

²²⁴ In addition to the fact that the CTIA Guidelines do not expressly address how carriers satisfy their duties under section 222 and the implementing Commission rules, the Guidelines also do not implicitly do so through their statement that "[c]onsent may be implicit, such as when users request a service that obviously relies on the location of their device." *NAL* Response at 29 (citing CTIA Guidelines at 5). Building on a concept suggested by T-Mobile's arguments here—that aggregators or LBS providers might better be viewed simply as recipients of CPNI, at least in some cases—that would mean that when CPNI flows to an aggregator or LBS provider, the carrier is "us[ing], disclos[ing], or permit[ing] access" to that CPNI within the meaning of section 222(c)(1). 47 U.S.C. § 222(c)(1). That would require the carrier to obtain customer consent—namely, opt-in consent under section 64.2007(b) of the Commission's rules—before providing those consumers' CPNI to aggregators or LBS providers. The carrier thus would have to have obtained opt-in consent from all customers whose CPNI the carrier would use, disclose, or permit access to in its location-based services initiative. In that scenario, and depending on the details, that opt-in consent could satisfy the carrier's obligations under section 222(c)(1) and section 64.2007(b) of the rules, such that the carrier need not ensure that the aggregator and LBS provider itself obtain customer consent on the carrier's behalf to ensure compliance with section 222. In that case, the LBS provider, consistent with the CTIA Guidelines, still might find it prudent, as a "best practice," to obtain customer consent—and might elect to do so through implicit consent under some circumstances (and subject to any other legal constraints that might apply to the LBS provider). We provide this as an illustrative example of how the CTIA Guidelines still could operate as useful guidance regarding best practices for LBS providers even where what it describes would not be sufficient to satisfy section 222(c)(1) of the Act and section 64.2007(b) of our rules. Because the *NAL* was not premised on that explanation of section 222(c)(1) and section 64.2007(b) of our rules, we make clear that our finding of liability is not predicated on that basis, and we instead describe it only for purposes of this illustrative example of the potential operation of the CTIA Guidelines.

²²⁵ See *NAL* Response at 29-30 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752, 8769, para. 31 (1992) (*1992 TCPA Order*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559, 564, para. 9 (2008) (*ACA Declaratory Ruling*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, 27 FCC Rcd 15391, 15392, 15394, paras. 2, 7 (2012) (*SoundBite Declaratory Ruling*)).

²²⁶ See *SoundBite Declaratory Ruling*, 27 FCC Rcd at 15394, para. 7 ("For confirmation texts of the type SoundBite describes, we conclude that a consumer's prior express consent to receive text messages from an entity can be reasonably construed to include consent to receive a final, one-time text message confirming that such consent is being revoked at the request of that consumer.").

²²⁷ See *ACA Declaratory Ruling*, 23 FCC Rcd at 564, para. 9 (relying on the Commission's prior decision in the *1992 TCPA Order*, including the legislative history that the Commission had relied upon in that decision).

²²⁸ *1992 TCPA Order*, 7 FCC Rcd at 8769, para. 31.

service provider could comply with T-Mobile's alleged requirement that each provider 'produce a clear visual depiction' of an implicit 'consent capture process.'"²²⁹ As also explained in the *NAL*, the legal regime governing CPNI requires that consent occur only after notice is provided to the consumer.²³⁰ Several of these concerns are echoed in the Commission's approach in the TCPA context. Namely, in concluding that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary," the Commission was careful to distinguish that scenario from one where "a caller's number is 'captured' by a Caller ID or an ANI device without notice to the residential telephone subscriber."²³¹ Whether or not one could characterize the Commission's approach in the TCPA context as relying on "implicit" or "implied" consent in some manner,²³² the context distinguishes it sharply from the regime governing disclosure of CPNI. In the *1992 TCPA Order*, the Commission approved calls in a scenario where the consumers provided their phone numbers with a chance to provide "instructions to the contrary" and where the consumer, by virtue of some explicit, volitional action, would have notice that they were opening themselves up to calls at the number they provided. We find those characteristics lacking in T-Mobile's approach here, particularly insofar as vulnerabilities like the Securus and Hutcheson breaches are concerned. Thus, even if we were to give some weight to the Commission's TCPA precedent in this context, it simply reinforces our assessment, consistent with the *NAL*, that T-Mobile's reliance on implicit consent in its LBS program was unreasonable even under T-Mobile's own views regarding the permissibility of implicit consent as a theoretical matter.

3. T-Mobile Bore the Burden of Production

67. As an initial matter, the Commission notes that for the reasons discussed above and the analysis contained in the *NAL*, the preponderance of the evidence shows that T-Mobile did not use reasonable safeguards throughout the period of the violation.²³³ As such, while the *NAL* discussed T-Mobile's burden of production to demonstrate that its protection of customer CPNI was reasonable,²³⁴ that burden-shifting is not necessary given the preponderance of the evidence. Nonetheless, even if unnecessary to prove T-Mobile's violations in this matter, the *NAL* properly shifted the burden of production to T-Mobile.

68. First, as the *NAL* explained²³⁵ and consistent with the *2007 CPNI Order*, where there is evidence of an unauthorized disclosure, the Commission will infer from that evidence that a carrier's practices were unreasonable unless the carrier offers evidence demonstrating that its practices were reasonable.²³⁶ In the *NAL*, the Commission found that T-Mobile failed to demonstrate that its safeguards

²²⁹ *NAL*, 35 FCC Rcd at 1805, para. 64.

²³⁰ *NAL*, 35 FCC Rcd at 1805, para. 64.

²³¹ *1992 TCPA Order*, 7 FCC Rcd at 8769, para. 31.

²³² T-Mobile cites *Baisden v. Credit Adjustments, Inc.*, 813 F.3d 338, 342 (6th Cir. 2016) as stating that the "FCC has 'interpreted 'prior express consent' to include a form of 'implied consent'". *NAL* Response at 29 & n.88. But the colloquial description of the Commission's *1992 TCPA Order* does not persuade us that the Commission has adopted any general approach to "implicit" or "implied" consent in the TCPA context, let alone that it should be applied in the CPNI context.

²³³ See *NAL*, 35 FCC Rcd at 1804-10, paras. 58-78.

²³⁴ See *NAL*, 35 FCC Rcd at 1788-89, 1804, paras. 9, 59-60.

²³⁵ See *NAL*, 35 FCC Rcd at 1788-89, para. 9.

²³⁶ See *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 (noting that where there is evidence of an unauthorized disclosure, the Commission "will infer . . . that the carrier did not sufficiently protect that customer's CPNI" and that "[a] carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue").

were reasonable following the disclosure of Securus's unauthorized location-finding service in May 2018.²³⁷

69. T-Mobile acknowledges that the *NAL* based its approach on the *2007 CPNI Order*,²³⁸ explaining that “where an unauthorized disclosure has occurred . . . the responsible carrier then shoulders the burden of proving the reasonableness of its measures to protect consumer data.”²³⁹ However, T-Mobile is incorrect when it asserts that the *2007 CPNI Order* cannot support the burden-shifting approach in cases outside of the pretexting context.²⁴⁰ The *2007 CPNI Order* afforded adequate notice of the application of burden-shifting in this case. The order did not expressly limit burden-shifting to the pretexting context, instead applying more broadly to unauthorized disclosures of CPNI.²⁴¹ The rationale applies with equal force to the kind of disclosure at issue here, where a fundamental issue is whether T-Mobile had reasonable measures to ensure that its customers had in fact consented to the disclosure of their CPNI. Indeed, the breach in the instant case is analogous to pretexting in that it involved fraud in order to obtain access to CPNI.²⁴² Broadly, in relation to Securus's entire unauthorized location-finding service, Securus used the pretext that it was requesting location information from T-Mobile for its approved use case and that it had explicit customer opt-in consent for the disclosure. Likewise, Hutcheson used the pretext that he had legal authorization or consumer consent when requesting location information from Securus.²⁴³ Therefore, applying the burden-shifting to this case is appropriate even to the extent that the disclosures here could be said not to have been pretexting of the same form described in the *2007 CPNI Order*.

70. *Second*, T-Mobile recognizes that an evidentiary presumption is valid if the circumstances (here, a breach of CPNI) giving rise to that presumption make it more likely than not that the presumed fact (here, that CPNI safeguards were unreasonable) exists.²⁴⁴ The Commission finds that the unauthorized disclosure in this case gave rise to a rebuttable presumption that T-Mobile did not reasonably protect customer location information from unlawful access.²⁴⁵ As already discussed, the entire Securus location-finding program was based upon unauthorized disclosures. Though the

²³⁷ See *NAL*, 35 FCC Rcd at 1807-10, paras. 69-78.

²³⁸ See *NAL* Response at 19 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*)).

²³⁹ *NAL*, 35 FCC Rcd at 1804, para. 59.

²⁴⁰ *NAL* Response at 19.

²⁴¹ We thus reject T-Mobile's claim that “the Commission is attempting to expand the approach” to burden shifting under the *2007 CPNI Order* “without ever having grappled with” petitions seeking reconsideration of that aspect of the *2007 CPNI Order*. *NAL* Response at 19 n.50. Burden shifting here falls within the scope of what was provided for in the *2007 CPNI Order*, which was not stayed pending action on those petitions for reconsideration. And in any case, T-Mobile has availed itself of the opportunity to contest the substantive merits of burden shifting in this enforcement proceeding.

²⁴² The breach at issue here arguably falls within the letter of criminal pretexting. See 18 U.S.C. § 1039.

²⁴³ As explained in the *NAL*, “Hutcheson submitted thousands of unauthorized location requests via the Securus service between 2014 and 2017, in some cases ‘upload[ing] entirely irrelevant documents including his health insurance policy, his auto insurance policy, and pages selected from Sheriff training manuals’ in lieu of genuine legal process.” *NAL*, 35 FCC Rcd at 1796, para. 28; see also *supra* para. 15.

²⁴⁴ See *NAL* Response at 20 n.52.

²⁴⁵ See *2007 CPNI Order*, 22 FCC Rcd at 6929, 6959, paras. 3, 63. A presumption is only permissible if there is “a sound and rational connection between the proved and inferred facts,” and when “proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact . . . until the adversary disproves it.” *Chemical Mfrs. Ass'n v. Department of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997) (quoting *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 788-89 (1990)) (internal citation and quotation marks removed).

disclosures to Hutcheson were particularly egregious (given they were essentially doubly unauthorized), *all* of the Securus requests made under the false guise of the approved use case and T-Mobile's resultant disclosures of consumer location information were unauthorized. T-Mobile's existing safeguards and oversight failed to notice and (absent the *New York Times* article) may have never realized that the unauthorized Securus location-finding program existed. Nonetheless, T-Mobile argues that the Commission cannot use the Securus and Hutcheson breaches to support shifting the burden of production to T-Mobile to provide evidence of the reasonableness of their post-May 2018 security practices.²⁴⁶ Specifically, T-Mobile asserts that because no provider can achieve perfection and the appropriate measures to employ can vary by carrier and circumstance, that undercuts the reasonableness of any burden shifting here.²⁴⁷ We disagree.

71. In the *NAL*, we found that T-Mobile apparently violated section 222(c) of the Act and section 64.2007(b) of our Rules in connection with its unauthorized disclosures of CPNI to Hutcheson.²⁴⁸ This is further bolstered by the Department of Justice's case against Hutcheson.²⁴⁹ And though the Commission opted to admonish T-Mobile only for the unauthorized disclosures made to Hutcheson, it would have been appropriate to admonish T-Mobile for all the disclosures it made to Securus in relation to the unauthorized location-finding service.²⁵⁰ In the *NAL*, we clearly explained that, pursuant to section 217 of the Act,²⁵¹ carriers cannot disclaim their obligations to protect customer CPNI by delegating those obligations to third parties.²⁵² We reiterate here that "T-Mobile is not absolved from liability simply because it was not directly responsible for operating the programs under which unauthorized disclosures occurred."²⁵³ And as the *NAL* explained, "[t]o the extent that the third parties were *not* acting on behalf of the carrier, the carrier itself would have provided those third parties with access to its customers' CPNI without obtaining for themselves the approval required by section 222(c)(1)—thus violating federal law."²⁵⁴ Further, section 222(c)(1) of the Act²⁵⁵ makes the responsibility for avoiding unauthorized disclosures a carrier obligation and prohibits use and disclosure except in certain narrow circumstances, without any reasonableness criterion. T-Mobile should, therefore, be able to justify any unauthorized disclosure. Given that multiple breaches occurred here and that the "reasonable measures" obligation is a

²⁴⁶ See *NAL* Response at 18-21.

²⁴⁷ See *NAL* Response at 20-21.

²⁴⁸ See *NAL*, 35 FCC Rcd at 1801-04, paras. 49-57. "The evidence reflects that Hutcheson used the Securus service to obtain the location information of T-Mobile customers. T-Mobile shared the information with LocationSmart, which then shared it with 3Cinteractive, which then shared it with Securus." *Id.* at 1801-02, para. 50.

²⁴⁹ See, e.g., Hutcheson Sentencing Memo.

²⁵⁰ T-Mobile seeks to analogize the circumstances here to a court that "allows an attorney to access confidential information and the attorney subsequently leaks it." *NAL* Response at 20. But that analogy is inapt. Implicit in T-Mobile's hypothetical is the notion that the court made a legally sound decision in its original action allowing the attorney access to confidential information, and the attorney, having validly obtained access to that information, then misused it. Here, by contrast, we find that the disclosure of the relevant location information in the Securus/Hutcheson breach was not legally permissible in the first instance under section 222(c)(1) and section 64.2007(b) of the rules. And it is that threshold action for which we hold T-Mobile accountable—not some subsequent abuse or misuse of information by a party whose initial access to the information was entirely lawful.

²⁵¹ 47 U.S.C. § 217.

²⁵² See *NAL*, 35 FCC Rcd at 1790, para. 10. Under section 217, "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person." 47 U.S.C. § 217.

²⁵³ See *NAL*, 35 FCC Rcd at 1802, para. 52.

²⁵⁴ *NAL*, 35 FCC Rcd at 1803, para. 54 n.145.

²⁵⁵ 47 U.S.C. § 222(c)(1).

continuing obligation, the Commission’s application of an evidentiary presumption based upon the disclosures involving Hutcheson and the imposition of a burden to produce evidence of reasonable protections during the later violations period was reasonable—particularly because, as discussed, those safeguards did not materially change in the interim timeframe.

72. The unauthorized disclosure at issue gave rise to a rebuttable presumption that T-Mobile did not adequately protect customer information from unlawful access. The burden of production then shifted to T-Mobile to offer evidence that it had reasonable safeguards in place.²⁵⁶

73. Rather than taking reasonable steps to safeguard its customers’ location information after the Securus/Hutcheson disclosures were reported,²⁵⁷ T-Mobile placed its customers’ location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers’ location information. For these reasons, we conclude that T-Mobile failed in its obligation under section 222 and our rules to have reasonable measures in place to discover and protect against attempts to gain unauthorized access to its customers’ CPNI.

D. The Forfeiture Amount is Lawful and Consistent with FCC Precedent

74. After considering the evidence in the record, the relevant statutory factors, the Commission’s *Forfeiture Policy Statement*, and the arguments advanced by T-Mobile in the NAL Response, we find that T-Mobile is liable for a total forfeiture of \$80,080,000 for its violations of section 222 of the Act and section 64.2010 of the Commission’s rules—a reduction of \$11,550,000 from the \$91,630,000 forfeiture proposed in the NAL.²⁵⁸ As explained in the NAL, this figure resulted from applying a base forfeiture of \$40,000 for the first day of each such violation and a \$2,500 forfeiture for the second and each successive day the violations continued (excluding the 30-day grace period granted by the Commission).²⁵⁹ The Commission found in the NAL that T-Mobile apparently engaged in 81 continuing violations—one for each ongoing relationship with a third-party LBS provider or aggregator that had access to T-Mobile customer location information more than 30 days after publication of the *New York Times* report—and that each violation continued until T-Mobile terminated the corresponding entity’s access to customer location information.²⁶⁰ Using this methodology, the Commission found T-Mobile apparently liable for a total base forfeiture of \$52,360,000. Upon considering the nature of the violations and the risk of harm they posed to consumers, the Commission then applied a 75% upward adjustment to the base forfeiture amount, resulting in a total proposed forfeiture of \$91,630,000.²⁶¹

75. T-Mobile challenges these forfeiture calculations with five principal arguments. *First*, T-Mobile argues that the NAL describes at most a single continuing violation, not a separate violation for each of the 81 entities participating in T-Mobile’s LBS program. As such, according to T-Mobile, the forfeiture exceeds the applicable statutory maximum.²⁶² *Second*, T-Mobile contends that the forfeiture is disproportionate to the alleged violation, inconsistent with other forfeitures imposed by the Commission,

²⁵⁶ We note that in some instances—most notably with regard to various audits that implicated the LBS program and over which T-Mobile asserted privilege—T-Mobile claimed to have taken certain reasonable steps, but did not produce documentary evidence of those steps. See NAL, 35 FCC Rcd at 1806, para. 67.

²⁵⁷ Many of the possible reasonable steps were enumerated in the NAL. See NAL, 35 FCC Rcd at 1807-10, paras. 69-78.

²⁵⁸ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

²⁵⁹ NAL, 35 FCC Rcd at 1811, para. 83.

²⁶⁰ NAL, 35 FCC Rcd at 1812, para. 84.

²⁶¹ NAL, 35 FCC Rcd at 1813-1814, paras. 87-91.

²⁶² NAL Response at 44-46.

and so excessive as to be unconstitutional.²⁶³ *Third*, T-Mobile argues that the proposed forfeiture is not in accordance with the Commission's own *Forfeiture Policy Statement*.²⁶⁴ *Fourth*, T-Mobile challenges the Commission's application of a 75% upward adjustment to the base forfeiture, disputing both the factors cited in calculating the upward adjustment and arguing that the Commission impermissibly cited to the same factors used for determining the base forfeiture amount.²⁶⁵ *Fifth* and finally, T-Mobile argues that even if the Commission could calculate the forfeiture based upon the number of LBS providers and how long they had access to customer location information, the proposed forfeiture relies upon incorrect facts and therefore is calculated incorrectly. Specifically, T-Mobile asserts that the NAL overcounted the number of LBS program participants by listing several duplicate entities. T-Mobile also states that it terminated certain LBS providers' access to customer location information prior to the two termination dates listed in the NAL.²⁶⁶

76. As we discuss below, to account for additional information provided by T-Mobile about the number of participants in its LBS program and when it terminated those participants' access to customer location information, we reduce the forfeiture proposed in the NAL by \$11,550,000. However, we are not persuaded by any of T-Mobile's other arguments and decline to cancel or further reduce the forfeiture proposed in the NAL.

1. The Commission Reasonably Found that T-Mobile Engaged in 81 Continuing Violations

77. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against T-Mobile of up to \$204,892 for each day of a continuing violation, up to a statutory maximum of \$2,048,915 "for any single act or failure to act."²⁶⁷ The Commission found that, because T-Mobile permitted 81 separate entities to access its customers' location information in the apparent absence of reasonable safeguards, the Company engaged in 81 continuing violations of section 222 of the Act and section 64.2010 of the Commission's rules. T-Mobile challenges this methodology, arguing that "[n]one of the 81 entities included in this calculation was accused of misappropriating data" and that to the extent T-Mobile violated section 64.2010 by allowing them to continue operating, it "did not have any reason or occasion to make 81 separate decisions."²⁶⁸ T-Mobile therefore asserts that there could have been at most one continuing violation (subject to the \$2,048,915 penalty cap) and the NAL's finding of 81 separate continuing violations (one for each LBS provider or Aggregator) constitutes an impermissible attempt to circumvent the statutory maximum.²⁶⁹

78. We reject this argument. Neither section 503(b) nor the forfeiture guidelines in section 1.80 of the Commission's rules speak to the application of the phrase "single act or failure to act," or otherwise to the calculation of the number of violations, in the CPNI or data security context.²⁷⁰ Moreover, in calculating a proposed penalty under section 222, the Commission previously applied a methodology under which a systemic failure to protect customer information constituted significantly more than a single violation. In *TerraCom*, the Commission stated that "[e]ach document containing

²⁶³ NAL Response at 46-50.

²⁶⁴ NAL Response at 50-51.

²⁶⁵ NAL Response at 52-56.

²⁶⁶ NAL Response at 57-58.

²⁶⁷ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any 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 19-1325 (EB 2019).

²⁶⁸ NAL Response at 45.

²⁶⁹ NAL Response at 44-45.

²⁷⁰ 47 U.S.C. § 503(b); 47 CFR § 1.80(b).

[proprietary information] that the Companies failed to protect constitutes a separate violation for which a forfeiture may be assessed.”²⁷¹ The Commission further observed that “[e]ach unprotected document constitutes a continuing violation that occurred on each of the 81 days [until] the date that the Companies remedied the failure”²⁷²

79. The Commission in *TerraCom* elected to ground its forfeiture calculation in the number of unprotected documents (which it “conservatively estimate[d]” as more than 300,000),²⁷³ but that approach was not mandated under section 503, section 222, or the Commission’s rules. Similarly, in this case, the Commission reasonably exercised its authority to find that each unique relationship between T-Mobile and an LBS provider or aggregator represented a distinct failure to reasonably protect customer CPNI and therefore a separate violation of section 222 of the Act and section 64.2010 of the Commission’s rules. Each such relationship relied upon a distinct and unique contractual chain (from T-Mobile to the Aggregator, then from the Aggregator to the LBS provider) and was premised to involve a specific, individually-approved “Use Case” that had been reviewed and authorized by T-Mobile. Treating these separate channels for the disclosure of location information—each of which, although unique, suffered from the same fundamental vulnerabilities discussed in the *NAL* and above—as separate violations was thus rational and properly within the Commission’s discretion.

80. The approach taken in the *NAL* was not only reasonable, it was—contrary to T-Mobile’s claim that it exceeded the statutory maximum—eminently *conservative*. As described in the *NAL*, T-Mobile’s practices placed the sensitive location information of *all* of its customers at unreasonable risk of unauthorized disclosure. As such, the Commission could well have chosen to look to the total number of T-Mobile subscribers when determining the number of violations (and under that analysis, the violations presumably would have continued until the very last LBS provider’s access to customer location information was cut off).²⁷⁴ Using that methodology—and taking into account the tens of millions of consumers whose highly sensitive location information was made vulnerable by T-Mobile—would have resulted in a significantly higher forfeiture than what was proposed in the *NAL*.

81. Furthermore, even under the framework applied in the *NAL*, the Commission could have calculated the proposed forfeiture based upon every single entity with access to T-Mobile customer location information up to the statutory maximum (\$204,892 per day up to \$2,048,915 for each and every LBS provider). That would have resulted in a far higher fine than the approach that was taken (applying a \$40,000 forfeiture for the first day of the violation and a \$2,500 forfeiture for each successive day the violation continued). Instead, the Commission took a conservative approach, giving T-Mobile a 30-day grace period with no fines assessed, limiting the number of continuing violations to every day that each related LBS provider operated in the apparent absence of reasonable measures to protect CPNI and therefore left T-Mobile customers’ CPNI vulnerable to unlawful disclosure, and assessing a far lower fine per day for the continuing violations than it could have. This approach recognized the Commission’s need to show that such violations are serious and ensured the proposed forfeiture amounts act as a powerful deterrent for future failures to reasonably protect CPNI.

82. We also reject any claim that T-Mobile’s due process rights were violated because it lacked fair notice that its LBS practices would potentially make it liable for a penalty in excess of the

²⁷¹*TerraCom*, 29 FCC Rcd at 13343, para. 50.

²⁷²*TerraCom*, 29 FCC Rcd at 13343, para. 50.

²⁷³*TerraCom*, 29 FCC Rcd at 13343, para. 52. The Commission’s investigation into apparent violations of consumer privacy requirements in *TerraCom* was resolved by a consent decree in which the companies admitted to violating sections 201(b) and 222(a) of the Act. See *TerraCom, Inc. and YourTel America, Inc.*, Order and Consent Decree, 30 FCC Rcd 7075, 7084, at para. 20 (EB 2015).

²⁷⁴ Although it involved a data breach—and not, as in this case, an ongoing failure to maintain reasonable safeguards such that customer data was placed at unreasonable risk of unauthorized disclosure—*TerraCom* supports applying a customer-centric forfeiture calculation that takes into account the number of customers whose data was inadequately protected. See *TerraCom*, 29 FCC Rcd at 13343, para. 50.

\$2,048,915 statutory maximum for a single continuing violation. Consistent with our earlier discussion of T-Mobile's fair notice claims,²⁷⁵ we find that this argument lacks merit. Customer location information is CPNI that is subject to protection under section 222 of the Act and section 64.2010 of the Commission's rules. T-Mobile knew, or should have known, that failing to reasonably protect CPNI carries with it significant potential penalties that may be associated with more than one violation. Indeed, the Commission has in the past proposed penalties for what could be viewed as a system-wide violation on a more granular basis that would yield higher penalties that would result from treating the violation as a single continuing violation.²⁷⁶ Independently, we observe that the penalties at issue here are governed by section 503 of the Act, with which we fully comply in our decision.²⁷⁷ As the D.C. Circuit has recognized, where a statute specifies maximum penalties, the statute itself provides fair notice of all penalties within that limit.²⁷⁸

2. The Forfeiture is not Excessive, Disproportionate, or Unconstitutional

83. T-Mobile contends that the proposed forfeiture "is grossly disproportionate to the conduct at issue and reflects a startling departure from prior forfeitures."²⁷⁹ T-Mobile points to other significant forfeitures proposed or levied by the Commission—such as the \$120 million and \$82.1 forfeitures imposed in the *Abramovich* and *Roesel* spoofed illegal robocall cases—and notes that they generally involved fraud, efforts to mislead consumers, intent to harm consumers, and the reaping of financial benefits from unlawful conduct.²⁸⁰ T-Mobile maintains that, by contrast, it did not engage in behavior "even *remotely approaching* the malfeasance present in these matters" and its conduct did not result in any comparable harm.²⁸¹

84. T-Mobile may not have engaged in fraud or otherwise sought to mislead or harm consumers, but that does not mean that its actions in this case were not egregious or worthy of a significant monetary penalty. As stated in the NAL, "even after highly publicized incidents put the Company on notice that its safeguards for protecting customer location information were inadequate, T-Mobile apparently continued to sell access to its customers' location information for the better part of a year without putting in place reasonable safeguards—leaving its customers' data at unreasonable risk of unauthorized disclosure."²⁸² As further explained in the NAL, the potential exposure of their location information put those customers "at significant risk of harm—physical, economic, or psychological."²⁸³

85. The base forfeiture amounts selected in the NAL properly took these risks to T-Mobile's customers into account. Moreover, they reflected the Commission's careful consideration of the relevant statutory factors. Section 503 of the Act requires the Commission to ". . . take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of

²⁷⁵ See *supra* B.

²⁷⁶ See, e.g., *TerraCom*, 29 FCC Rcd at 13343, paras. 51-52.

²⁷⁷ 47 U.S.C. § 503.

²⁷⁸ *Pharon v. Bd. of Gov. of the Fed. Reserve*, 135 F.3d 148, 157 (D.C. Cir. 1998) (applying *BMW of North Am. v. Gore*, 517 U.S. 559 (1996), to a penalty assessed by the Board and concluding that the relevant statutory maximum penalty provisions provided adequate notice).

²⁷⁹ NAL Response at 46.

²⁸⁰ NAL Response at 46-47 (citing *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, 33 FCC Rcd 4663, 4667-68 para. 14, 4668 para. 15, 4677 para. 38 (2018); *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, 33 FCC Rcd 9204, 9211 para. 17, 9212 para. 22, 9214 para. 28 (2018)).

²⁸¹ NAL Response at 48.

²⁸² NAL, 35 FCC Rcd at 1786, para. 3.

²⁸³ NAL, 35 FCC Rcd at 1811, para. 81.

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁸⁴ The plain language of the statute provides the Commission with broad discretion to assess proposed penalties based on the statutory factors, up to the statutory maximum.

86. In selecting the base forfeitures that it did, the Commission explained that the chosen amounts “(1) . . . provide a meaningful distinction between the violations in this case and those of other cases involving less egregious facts; and (2) . . . provide consistency with other consumer protection cases involving serious harm to consumers.”²⁸⁵ The Commission also found that “this base forfeiture appropriately deters wrongful conduct and reflects the increased risk consumers face when their information is not secured in a timely manner.”²⁸⁶ Given the broad discretion afforded to the Commission under section 503, as well as the *NAL*’s examination of how the relevant statutory factors intersected with the facts of this case, we reject T-Mobile’s claim that the forfeiture amount is excessive or disproportionate.

87. We also reject T-Mobile’s argument that the proposed forfeiture is “so grossly excessive” as to violate basic principles of due process and the Eighth Amendment’s prohibition against excessive fines.²⁸⁷ In evaluating a claim that a forfeiture is excessive under the Eighth Amendment, one especially probative factor is whether the fine is within the prescribed statutory maximum for the underlying offense.²⁸⁸ Here, as discussed, the forfeiture falls well below the statutory limit.²⁸⁹ Further, T-Mobile, as a telecommunications carrier, falls squarely within the class of entities section 222 of the Act and the Commission’s implemented rules was designed to address.²⁹⁰ And as discussed in this section,²⁹¹ the nature of the harm from T-Mobile’s conduct was very serious notwithstanding T-Mobile’s attempts to claim otherwise.²⁹² Thus, we find there is no merit to T-Mobile’s challenge to the constitutionality of the forfeiture amount.

3. The Forfeiture Comports with the Commission’s *Forfeiture Policy Statement*

88. T-Mobile also claims the proposed base forfeiture amount is “wildly inconsistent” with the Commission’s own rules.²⁹³ Specifically, T-Mobile cites to the Commission’s *Forfeiture Policy*

²⁸⁴ 47 U.S.C. § 503(b).

²⁸⁵ *NAL*, 35 FCC Rcd at 1812, para. 83.

²⁸⁶ *NAL*, 35 FCC Rcd at 1812, para. 83.

²⁸⁷ *NAL* Response at 48.

²⁸⁸ See *Newell Recycling Co. v. EPA*, 231 F.3d 204, 210 (5th Cir. 2000) (internal quotation marks omitted). Similarly, the D.C. Circuit readily upheld the Commission’s imposition of the maximum statutory penalty (adjusted for inflation) against an unlicensed radio operator who challenged that penalty as excessive. See *Grid Radio v. FCC*, 278 F.3d 1314, 1322 (D.C. Cir. 2002) (noting that the statutory amount was “neither indefinite nor unlimited,” and that it did not “seem excessive in view of the [petitioner’s] continued and willful violation of the licensing requirement”). See also *Scott Malcolm*, Order on Reconsideration, 33 FCC Rcd 2410, 2413-14, para. 11 (2018) (“Because the forfeiture was within the statutory limits, there is a strong indication that it was not excessive.”).

²⁸⁹ See *supra* III.D.1.

²⁹⁰ See, e.g., *Scott Malcolm*, 33 FCC Rcd at 2413, para. 10 (noting that an additional consideration under Eighth Amendment analysis is “whether the person fined is within the class of persons for whom the authorizing statute was principally designed”).

²⁹¹ See generally III.D.

²⁹² See, e.g., *Scott Malcolm*, 33 FCC Rcd at 2413, para. 10 (noting that an additional consideration under Eighth Amendment analysis is “the nature of the harm caused by the sanctioned person’s conduct”).

²⁹³ *NAL* Response at 50.

*Statement*²⁹⁴ and section 1.80 of the Commission's Rules²⁹⁵ (into which the terms of the *Forfeiture Policy Statement* were codified), which reserve the highest base penalty (the statutory maximum) for violations involving misrepresentation/lack of candor. According to T-Mobile, there is an unjustifiable discrepancy between that base forfeiture amount (approximately \$200,000) and the base forfeitures proposed in the *NAL*, which T-Mobile calculates to be more than three times as much, or approximately \$650,000.²⁹⁶ T-Mobile contends that, because its alleged violations were much less egregious than ones involving misrepresentation/lack of candor, it should be subject to lower base forfeiture amounts.

89. We disagree with T-Mobile's reasoning and calculations. In drawing the distinction that it does, T-Mobile fails to compare apples to apples. Rather than the \$204,892 statutory maximum for a single violation or each day of a continuing violation that is cited by T-Mobile, the relevant point of comparison is the \$2,048,915 overall statutory maximum for any single act or failure to act involving a *continuing* violation. As explained in the *NAL*, the "violations in this case were continuing in nature, extending each day that the Company's location-based services operated in the apparent absence of reasonable measures to protect CPNI."²⁹⁷ Thus, even total base forfeitures of approximately \$650,000 (as T-Mobile calculates the number) are well under the approximately \$2 million statutory maximum that is applicable to each continuing violation in this case and that would potentially have been proposed, as the base forfeitures, if the violations had involved misrepresentation/lack of candor.

4. The Upward Adjustment is Permissible and Warranted

90. T-Mobile argues that the Commission failed to properly justify the 75% upward adjustment to the forfeiture amount proposed in the *NAL*. T-Mobile contends that two of the factors cited by the Commission in connection with the upward adjustment—the 2017 LocateUrCell incident and T-Mobile's acceptance of implied consent for certain LBS services—do not involve wrongful or egregious conduct and thus cannot rationally serve as aggravating factors.²⁹⁸ T-Mobile also claims that the third factor cited in the *NAL*—the duration of the violation and the risk of harm it posed to consumers—was already considered in setting the base forfeiture amount and therefore constitutes arbitrary double counting.²⁹⁹

91. We reject these arguments and maintain the 75% upward adjustment proposed in the *NAL*. With regard to the upward adjustment, section 503 of the Act requires the Commission to "... take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³⁰⁰ The plain language of the statute provides the Commission with broad discretion to assess proposed penalties based on the statutory factors, up to the statutory maximum. Moreover, section 1.80 of the FCC's rules provides a list of possible factors the Commission may use when making a determination to adjust upward or adjust downward the base forfeiture.³⁰¹ These factors include, importantly, "egregious misconduct," "substantial harm," "repeated or continuous violation," and "ability to pay/relative disincentive," among others.³⁰²

²⁹⁴ *Forfeiture Policy Statement*, 12 FCC Rcd 17087.

²⁹⁵ 47 CFR § 1.80.

²⁹⁶ *NAL* Response at 50-51. T-Mobile derives this figure by dividing the total base forfeiture of \$52,360,000 by the number of alleged violations (81), for a per-violation amount of \$646,419.75.

²⁹⁷ *NAL*, 35 FCC Rcd at 1811, para. 83.

²⁹⁸ *NAL* Response at 52-55.

²⁹⁹ *NAL* Response at 55-56.

³⁰⁰ 47 U.S.C. § 503(b).

³⁰¹ 47 CFR § 1.80(b)(10), Table 3.

³⁰² *Id.*

92. The Commission weighed these factors when making the determination that the base forfeiture in this case merited a substantial upward adjustment. T-Mobile's conduct was egregious; the *NAL* detailed how T-Mobile failed to respond reasonably to the 2017 LocateUrCell incident and how it showed reckless disregard for CPNI requirements by relying on "implicit consent" for the disclosure of location information.³⁰³ Further, revelations in the press about Securus's hidden location information program led to a public outcry and prompted inquiries from members of Congress concerned about carriers' apparent lack of control over highly sensitive location information.³⁰⁴ Its failure to adequately protect CPNI for a protracted amount of time caused substantial harm by making it possible for "malicious persons to identify the exact locations of T-Mobile subscribers who belong to law enforcement, military, government, or other highly sensitive positions—thereby threatening national security and public safety"—a threat illustrated by reports that Hutcheson used location information to obtain the precise location of multiple Missouri State Highway Patrol officers on numerous occasions.³⁰⁵ The violations were continuous over an extended period of time and repeated with two Aggregators and multiple LBS providers. Finally, the Commission took into account T-Mobile's status as a major telecommunications provider to determine what penalty, when applied, would adequately provide T-Mobile with the necessary disincentive to engage in similar conduct again in the future. These considerations, taken into account as the Commission lawfully exercised its statutory authority to weigh the relevant factors, justify the resulting upward adjustment. T-Mobile's arguments to the contrary do not defeat Congress's decision to grant the FCC the power to weigh the factors and make such adjustments "as justice may require."³⁰⁶ Nor do T-Mobile's arguments persuade us that the 75% upward adjustment, which is in line with upward adjustments in other cases involving consumer harms,³⁰⁷ was unwarranted.

5. The Commission Will Reduce the Forfeiture Amount by \$11,550,000

93. T-Mobile asserts that even if the Commission's forfeiture methodology is permissible, the calculations in the *NAL* are based on incorrect facts. Specifically, for the 81 entities whose ongoing

³⁰³ *NAL*, 35 FCC Rcd at 1813-14, paras. 87-88. For the reasons discussed earlier, we reject T-Mobile's claim that the Commission drew the wrong conclusions from the LocateUrCell incident and T-Mobile's use of "implied consent" for the disclosure of location information. See *supra* III.C.1-2.

³⁰⁴ See e.g., Letter from Sen. Ronald L. Wyden, Senator, U.S. Senate, et al., to Joseph J. Simons, Chairman, Federal Trade Commission, and Ajit Pai, Chairman, Federal Communications Commission (Jan. 24, 2019) (on file in EB-TCD-18-00027704) (this letter was signed by 15 United States senators); Letter from Rep. Frank J. Pallone, Jr., Chairman, U.S. House of Representatives Committee on Energy and Commerce, to Ajit Pai, Chairman, Federal Communications Commission (Jan. 11, 2019) (on file in EB-TCD-18-00027704); Maria Dinzeo, *Class Claims AT&T Sold Their Real-Time Locations to Bounty Hunters*, Courthouse News Service (July 16, 2019), <https://www.courthousenews.com/class-claims-att-sold-their-real-time-locations-to-bounty-hunters/>; Brian Barrett, *A Location-Sharing Disaster Shows How Exposed You Really Are*, Wired (May 19, 2018), <https://www.wired.com/story/locationsmart-securus-location-data-privacy/>; Press Release, New America's Open Technology Institute, *Privacy Advocates Call on FCC to Hold Wireless Carriers Accountable for Selling Customer Location Information to Third Parties Without Consent* (June 14, 2019), <https://www.newamerica.org/oti/press-releases/privacy-advocates-call-fcc-hold-wireless-carriers-accountable-selling-customer-location-information-third-parties-without-consent/> (announcing that New America's Open Technology Institute, the Center on Privacy & Technology at Georgetown Law, and Free Press had filed a complaint with the FCC regarding the sale and disclosure of customer location information by T-Mobile, AT&T, Verizon, and Sprint).

³⁰⁵ *NAL*, 35 FCC Rcd at 1814, para. 89.

³⁰⁶ 47 U.S.C. § 503(b).

³⁰⁷ See, e.g., *Scott Rhodes*, Forfeiture Order, 36 FCC Rcd 705, 728, at para. 54 (2021) (upward adjustment equaling 100% of base forfeiture amount on robocaller/spoofers who made targeted robocalls designed to harass victims); *John C. Spiller, et al.*, Forfeiture Order, 36 FCC Rcd 6225, 6257, at para. 59 (2021) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4671, at para. 25, 4674, at para. 33 (2018) (upward adjustment equaling 50% of base forfeiture amount imposed on robocaller who engaged in illegal spoofing for robocall telemarketing activities).

access to customer location information factored into the forfeiture amount, the *NAL* cites two separate termination dates (one for MicroBilt and the other for the remaining 80 entities).³⁰⁸ According to T-Mobile, many of the LBS program participants' access to customer location information actually was terminated before the listed date.³⁰⁹ T-Mobile also claims that the number of LBS providers listed in the *NAL* (81) reflects duplicates of certain entities and the number of unique participants was in fact 73.³¹⁰

94. In developing the *NAL*, the Commission relied upon the information furnished to it by T-Mobile, including a listing of LBS program participants and when their access to customer location information was terminated, and reasonably expected that information to be accurate and complete.³¹¹ Nonetheless, in light of the additional details provided by T-Mobile in the *NAL* Response, we now exercise our discretion to reduce the forfeiture amount to reflect the correct number of continuing violations and the length of time those violations continued.

95. Based upon the information provided by T-Mobile, we reduce the base forfeiture by \$6,600,000, from \$52,360,000 to \$45,760,000. This reduction reflects both the double-counting of eight entities in the original *NAL*, as well as the termination dates of certain LBS program participants' access to T-Mobile customer location information. We continue to apply a 75% upward adjustment, or \$34,320,000, resulting in a new total forfeiture of \$80,080,000 (a reduction of \$11,550,000 from the \$91,630,000 proposed in the *NAL*).

E. Section 503(b) Is Employed Here Consistent With the Constitution

96. We reject T-Mobile's supplemental constitutional objections that: (1) the FCC combines investigatory, prosecutorial, and adjudicative roles in violation of constitutional due process and separation of powers requirements;³¹² (2) the issuance of a forfeiture order by the Commission would violate Article III and the Seventh Amendment;³¹³ and (3) the Commission's ability to choose a procedural approach to enforcement under section 503(b) of the Act is an unconstitutional delegation of legislative power.³¹⁴ T-Mobile's arguments are premised on misunderstandings regarding the relevant statutory framework, the nature of the Commission's actions, and relevant precedent.

97. As a threshold matter, T-Mobile neglects key aspects of the statutorily-mandated enforcement process applicable here. Pursuant to section 504 of the Act, after the Commission issues a forfeiture order, T-Mobile is entitled to a trial *de novo* in federal district court before it can be required to pay the forfeiture.³¹⁵ T-Mobile's objection to the combination of investigatory, prosecutorial, and adjudicative roles in the FCC ignores that statutory entitlement to a trial *de novo* in federal district court to

³⁰⁸ *NAL*, 35 FCC Rcd at 1812, para. 84.

³⁰⁹ *NAL* Response at 58-59.

³¹⁰ *NAL* Response at 57.

³¹¹ T-Mobile "acknowledges" that the Commission provided it with an opportunity to supplement the record to correct these errors, but discounts this offer as having been made "at the eleventh hour." *NAL* Response at 57 n.181.

³¹² Letter from Helgi C. Walker and Russell B. Balikian, counsel to T-Mobile/Sprint, to Michael Epshteyn and Rosemary Cabral, Enforcement Bureau, FCC, EB-TCD-18-00027702 and EB-TCD-18-00027700, at 2-3 (filed June 22, 2023) (T-Mobile/Sprint June 22, 2023 Supplemental *NAL* Response).

³¹³ T-Mobile/Sprint June 22, 2023 Supplemental *NAL* Response at 2.

³¹⁴ T-Mobile/Sprint June 22, 2023 Supplemental *NAL* Response at 3-4.

³¹⁵ 47 U.S.C. § 504(a); see also, e.g., *Ill. Citizens Comm. for Broadcasting v. FCC*, 515 F.2d 397, 405 (D.C. Cir. 1974) (noting that "a jury trial was available" in an action to collect a forfeiture). That T-Mobile theoretically might elect to pay the forfeiture voluntarily does not diminish its statutory right to a trial *de novo* in federal district court.

ultimately adjudicate its obligation to pay a forfeiture.³¹⁶ Likewise, T-Mobile's claim that a forfeiture order issued under section 503(b) of the Act does not provide it a decision by an Article III court, including via a trial by jury, ignores T-Mobile's statutory right to a trial *de novo* before it can be required to pay the forfeiture.³¹⁷ The statutory right to a trial *de novo* provided for by section 504 of the Act is itself sufficient grounds to reject those two constitutional claims.

98. Independently, there are sufficient grounds to reject T-Mobile's arguments for other reasons, as well. We discuss each of these in turn below.

99. *Combination of Functions.* With respect to T-Mobile's claimed due process violation,³¹⁸ T-Mobile fails to demonstrate sufficient grounds for concluding that a combination of functions in the Commission's enforcement process here renders it constitutionally suspect, even apart from T-Mobile's failure to account for the trial *de novo* under section 504 of the Act. It is true that "a 'fair trial in a fair tribunal is a basic requirement of due process,'" but objections in that regard premised on the combination of functions in an agency "must overcome a presumption of honesty and integrity in those serving as adjudicators."³¹⁹ To overcome that presumption requires "a showing of conflict of interest or some other specific reason for disqualification."³²⁰

100. T-Mobile fails to demonstrate a concern specific to the Commission's forfeiture order here sufficient to overcome the presumption of honesty and integrity. Insofar as T-Mobile notes the

³¹⁶ See, e.g., *Concrete Pipe & Prods. of Cal. v. Construction Lab. Pension Trust for S. Cal.*, 508 U.S. 602, 618 (1993) ("Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator to 'conduct a *de novo* review of all factual and legal issues.'").

³¹⁷ Cf. *Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25, 38-40 (2014) (where a claim raised before a bankruptcy court implicates the judicial power under Article III of the constitution, the bankruptcy court can make proposed findings of fact and conclusions of law for *de novo* review by a federal district court, and even if a bankruptcy court adjudicates such a claim itself, *de novo* review of that decision by a federal district court resolved any Article III concern); *Crowell v. Benson*, 285 U.S. 22, 50-65 (1932) (even in the case of private rights, an agency can make factual findings and render an initial decision of law subject to *de novo* review of issues of jurisdictional fact and of law in an Article III court).

³¹⁸ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2-3. T-Mobile contends that the combination of functions in the FCC "violates due process and the separation of powers under the circumstances presented in this case," T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2, but does not develop the separation of powers argument or explain why the combination of functions in the Commission violates existing separation of powers precedent. Consequently, we do not find that a basis to alter our approach in this forfeiture order, and instead focus on those arguments that T-Mobile does develop.

³¹⁹ *Withrow v. Larkin*, 421 U.S. 35, 46, 47 (1975); see also, e.g., *id.* at 47-48 (discussing *FTC v. Cement Institute*, 333 U.S. 683 (1948), where the Court found no due process violation based on the adjudicators' prior investigations, including stated opinions about the legality of certain pricing systems, because "[t]he fact that the Commission had entertained such views as the result of its prior ex parte investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of the respondents' basing point practice" and in the adjudication at issue "members of the cement industry were legally authorized participants in the hearings" and submit evidence and arguments in defense of their positions); *In re Zdravkovich*, 634 F.3d 574, 579 (D.C. Cir. 2011) ("In *Withrow v. Larkin*, the Supreme Court expressly rejected the claim that due process is violated where '[t]he initial charge or determination of probable cause and the ultimate adjudication' are made by the same agency."); *Ethicon Endo-Surgery v. Covidien*, 812 F.3d 1023, 1029-30 (Fed. Cir. 2016) (observing that "[l]ower courts have also rejected due process challenges to systems of adjudication combining functions in an agency," and collecting illustrative cases).

To the extent that T-Mobile argues that the Supreme Court's decision in "*Withrow* is ripe for overruling," T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3, doing so would be a matter for the Supreme Court itself, and we are not persuaded to chart a different approach on our own.

³²⁰ *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); see also, e.g., *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 881 (2009) (the due process inquiry is "whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'").

existence of pending due process claims premised on the combination of functions involving another agency, we are not persuaded to treat those still-pending adjudicated arguments as warranting the conclusion that there is a genuine due process concern here.³²¹

101. T-Mobile also expresses concern that “the Commission performed its own investigations of alleged violations of the Communications Act (based on newspaper articles), prosecuted them by issuing NALs, and plans to resolve any challenges to these NALs itself by imposing forfeitures directly.”³²² But these broad-brush objections do not identify specific reasons that a reasonable adjudicator in the Commission’s position would be biased in this proceeding—certainly not one sufficient to overcome the background presumption of honesty and integrity on the part of agency adjudicators. To the contrary, finding a due process violation based simply on those concerns would, in large part, turn that background presumption on its head by a requiring a presumption of bias whenever the Commission issued an NAL. Such an understanding would be at odds with the range of scenarios where courts have found no due process concerns with adjudication by individuals despite earlier involvement in a matter.³²³

102. Nor do the “[s]pecial facts and circumstances” that T-Mobile alleges are present persuade us that due process concerns are present here.³²⁴ T-Mobile criticizes the magnitude of the proposed forfeiture and the methodology used to calculate them as reflecting a “break from precedent and policy,” that “reflects animosity toward the parties and an unwillingness to neutrally consider the legal and factual arguments that [T-Mobile] raised.”³²⁵ The potential to adopt forfeitures—even substantial forfeitures—that would be paid into the U.S. Treasury does not create a risk of financial bias on the part of reasonable adjudicators in the Commission’s position.³²⁶ We also are not persuaded that the Commission’s decision to issue an NAL proposing even a significant forfeiture is likely to create the risk of bias in the Commission’s subsequent decision regarding a forfeiture order. Although the Supreme Court has stated in the context of criminal prosecutions that “there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case,” we find even a significant proposed forfeiture materially distinguishable from the

³²¹ See T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing the pending constitutional challenge involving the FTC underlying *Axon Enterprise v. FTC*, 143 S. Ct. 890 (2023)).

³²² T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

³²³ For example, the Supreme Court in *Withrow v. Larkin* observed that “judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact,” and “the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court,” noting also that “a hearing examiner who has recommended findings of fact after rejecting certain evidence as not being probative was not disqualified to preside at further hearings that were required when reviewing courts held that the evidence had been erroneously excluded.” *Withrow v. Larkin*, 421 U.S. at 48-49 (internal quotation marks omitted). The Court’s willingness to accept continued adjudicator participation even where final—not merely preliminary—decisions previously had been made by the adjudicators strongly supports our analysis here.

³²⁴ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

³²⁵ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

³²⁶ See, e.g., *Ward v. Village of Monroe*, 409 U.S. 57, 59-61 (1972) (“[T]he test is whether the [decisionmaker’s] situation is one ‘which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . . ,’” and due process was violated where a mayor acted as an adjudicator and also obtained a portion of the fees and costs he imposed in that role, whereas due process was not violated where a mayor acted as an adjudicator but “the Mayor’s relationship to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.”); *Brucker v. City of Doraville*, 38 F.4th 876, 884 (11th Cir. 2022) (“The fact that a judge works for a government, which gets a significant portion of its revenues from fines and fees, is not enough to establish an unconstitutional risk of bias on the part of the judge.”).

imposition of criminal penalties—particularly the death penalty.³²⁷ For example, we are not persuaded that the Commission’s decision to propose a forfeiture in an NAL creates the same degree of risk of an adjudicator becoming “psychologically wedded” to that proposal as in the case of a prosecutor’s decision to authorize prosecutors to seek the death penalty, nor does T-Mobile provide evidence that is the case here.³²⁸ We also do not find that the NAL-initiated enforcement process presents the risk of adjudicators acting on the basis of extra-record information or impressions of the respondent that the Court found of concern in the case of a criminal prosecutor then serving as a judge.³²⁹ In particular, section 503(b) requires a Commission NAL to “set forth the nature of the act or omission charged . . . and the facts upon which such charge is based,”³³⁰ and T-Mobile has not identified concerns about the decision here being premised on extra-record evidence obtained by the Commission or commissioners in the development of the NAL.

103. Instead, the “[s]pecial facts and circumstances” raised by T-Mobile amount to little more than differences of opinion regarding legal interpretations or the gravity of the violations.³³¹ We are not persuaded that such differences of opinion—which can arise in virtually every Commission enforcement action—inherently provide any reason to question the Commission’s neutrality as an adjudicator. The main thrust of T-Mobile’s argument seems to be that “the penalties would be among the largest in the Commission’s history and impose penalty amounts typically reserved for fraud or deliberate misconduct” in what T-Mobile characterizes as a “break from precedent and policy.”³³² But T-Mobile provides no basis to expect that only fraud or deliberate misconduct can justify penalties of the magnitude at issue here, and we already have explained our rationale for both the methodology for calculating the forfeiture and its ultimate magnitude.³³³ Both the Communications Act and Commission rules direct the agency, when deciding on a forfeiture amount, to “take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,” and that is precisely what the Commission did here.³³⁴ It is not surprising that the private company that potentially will be subject to a forfeiture might assess the nature and gravity of its violations differently than the Commission, but those differing views are not grounds for finding a likelihood of bias on the part of the Commission. We thus reject T-Mobile’s claims of a due process violation through our implementation of the section 503(b) NAL-based process here.

104. *Trial By Jury.* We also reject T-Mobile’s contention that adjudication of the violations at issue here may not constitutionally be assigned to a federal agency.³³⁵ The Seventh Amendment preserves “the right of trial by jury” in “Suits at common law, where the value in controversy shall exceed twenty

³²⁷ *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (finding a due process violation where the judge previously had been involved as a prosecutor in authorizing the prosecution to seek the death penalty).

³²⁸ See *Williams v. Pennsylvania*, 579 U.S. at 9 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty).

³²⁹ See *Williams v. Pennsylvania*, 579 U.S. at 9-10 (identifying this concern in the case of a prosecutor that authorized the prosecution to seek the death penalty and also citing *In re Murchison*, 349 U.S. 133, 138 (1955), which involved an individual acting in the role of both a grand jury and judge where similar concerns arose); see also, e.g., *Withrow v. Larkin*, 421 U.S. at 54 (explaining that “Murchison has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications”).

³³⁰ 47 U.S.C. § 503(b)(4).

³³¹ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

³³² T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3.

³³³ See *supra* Section III.D.

³³⁴ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

³³⁵ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2.

dollars,”³³⁶ but the Seventh Amendment applies only to suits litigated in Article III courts, not to administrative adjudications conducted by federal agencies.³³⁷ In determining whether an adjudication involves an exercise of judicial power vested in the federal courts under Article III of the constitution, the Supreme Court has distinguished between “public rights” and “private rights.”³³⁸ Congress has broad authority to “assign adjudication of public rights to entities other than Article III courts.”³³⁹ Examples of “public rights” litigation involving “cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact” include enforcement of federal workplace safety requirements,³⁴⁰ “adjudicating violations of the customs and immigration laws and assessing penalties based thereon,”³⁴¹ adjudicating “whether an unfair labor practice had been committed and of ordering backpay where appropriate,”³⁴² and the grant or reconsideration of a grant of a patent.³⁴³ That precedent confirms the constitutionality validity of FCC adjudication of violations of the Communications Act, even setting aside the reality that T-Mobile does, in fact, have the right of a trial *de novo* under section 504 of the Act here. Through section 222 of the Communications Act, Congress “created new statutory obligations”³⁴⁴ designed to protect consumer privacy even as the communications marketplace became more open to competition,³⁴⁵ analogous to those previously identified as involving public rights. Congress further “provided for civil penalties” for violations of those obligations, and constitutionally could entrust to the Commission “the function of deciding whether a violation has in fact occurred” when deciding whether to issue a forfeiture order, bringing it well within the “public rights” framework of existing Supreme Court precedent.³⁴⁶

105. Relying principally on the Supreme Court’s decision in *Tull v. United States* and the Fifth Circuit’s decision in *Jarkesy*, T-Mobile contends that the forfeiture at issue here should fall within the “private rights” framework—requiring adjudication in an Article III court, with the right to a trial by jury—because the violations allegedly are analogous to a common law action in debt.³⁴⁷ In *Tull*, the government was pursuing a claim in federal district court seeking penalties and an injunction under the

³³⁶ U.S. Const. amend. VII.

³³⁷ See, e.g., *Oil States Energy Services v. Greene’s Energy Group*, 138 S. Ct. 1365, 1379 (2018); *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442, 455 (1977).

³³⁸ *Oil States*, 138 S. Ct. at 1373 (citation omitted).

³³⁹ *Id.*

³⁴⁰ *Atlas Roofing*, 430 U.S. at 450, 461

³⁴¹ *Id.* at 451.

³⁴² *Id.* at 453.

³⁴³ *Oil States*, 138 S. Ct. at 1373.

³⁴⁴ *Atlas Roofing*, 430 U.S. at 450.

³⁴⁵ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8064, para 1 (1998) (“Congress recognized, . . . that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.”).

³⁴⁶ *Atlas Roofing*, 430 U.S. at 450.

³⁴⁷ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing *Tull v. United States*, 481 U.S. 412 (1987) and *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022)). T-Mobile also cites Justice Thomas’ concurrence in *Axon*. *Id.* (citing *Axon*, 143 S. Ct. at 911 (Thomas, J., concurring)). However, as relevant here, Justice Thomas was critiquing existing Supreme Court precedent insofar as it had allowed agency adjudication subject to only deferential appellate court review. *Axon*, 143 S. Ct. at 906-09 (Thomas, J., concurring). We are not persuaded to alter our analysis based on one Justice’s non-controlling opinion, and we therefore continue to apply existing Supreme Court precedent as it bears on our analysis here.

Clean Water Act and the district court had denied the defendant's request for a jury trial.³⁴⁸ But as the Supreme Court also has made clear, Congress can assign matters involving public rights to adjudication by an administrative agency "even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead."³⁴⁹ Thus, *Tull* does not address the question of whether Congress can assign the adjudication of a given matter to an administrative agency—it speaks only to the Seventh Amendment implications of a matter that is assigned to an Article III court. To the extent that the Fifth Circuit in *Jarkesy* treated *Tull* as standing for the proposition that causes of action analogous to common-law claims would, as a general matter, need to be adjudicated in Article III courts with a right to trial by jury, we are unpersuaded.³⁵⁰ As the Supreme Court has held in a post-*Tull* decision, "Congress may fashion causes of action that are closely analogous to common-law claims and place them beyond the ambit of the Seventh Amendment by assigning their resolution to a forum in which jury trials are unavailable."³⁵¹ We thus are unpersuaded by T-Mobile's reliance on *Tull* and *Jarkesy*.³⁵²

106. *Nondelegation*. Finally, contrary to T-Mobile's contention,³⁵³ the choice of enforcement processes in section 503(b) of the Act does not constitute an unconstitutional delegation of legislative power. Section 503(b)(3) and (4) of the Act gives the Commission a choice of two procedural paths when pursuing forfeitures: either the NAL-based path most commonly employed by the Commission—which we have used here—or a formal adjudication in accordance with section 554 of the Administrative Procedure Act before the Commission or an administrative law judge.³⁵⁴ Contrary to T-Mobile's suggestion, this choice involves the exercise not of legislative power but of executive power. The choice of enforcement process reflected in section 503(b) does not require the Commission to establish general rules governing private conduct of the sort that might implicate potential concerns about unauthorized lawmaking, but instead involves the exercise of enforcement discretion that is a classic executive power.³⁵⁵

³⁴⁸ *Tull*, 481 U.S. at 414-15.

³⁴⁹ *Atlas Roofing*, 430 U.S. at 455.

³⁵⁰ T-Mobile also cites *Burgess v. FDIC*, but in pertinent part that district court decision simply applied the binding circuit precedent of *Jarkesy*. T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 2 (citing *Burgess v. FDIC*, 2022 WL 17173893, at *10-11 (N.D. Tex. Nov. 6, 2022)).

³⁵¹ *Granfinanciera v. Nordberg*, 492 U.S. 33, 52 (1989) (emphasis omitted). We also are unpersuaded by the Fifth Circuit's decision in *Jarkesy* insofar as it interpreted *Granfinanciera* as establishing an additional prerequisite for a public right—namely, "when Congress passes a statute under its constitutional authority that creates a right so closely integrated with a comprehensive regulatory scheme that the right is appropriate for agency resolution." *Jarkesy*, 34 F.4th at 453. But *Granfinanciera* involved a dispute between two private parties, rather than an enforcement action commenced by the government. *Granfinanciera*, 492 U.S. at 51. The *Granfinanciera* Court explained that it had previously applied the public-rights doctrine to sustain "administrative factfinding" in cases "where the Government is involved in its sovereign capacity," but the Court distinguished such cases from "[w]holly private" disputes. *Id.* (citation omitted). It was in the context of private disputes—*i.e.*, "in cases not involving the Federal Government"—where the Court considered whether Congress "has created a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution." *Granfinanciera*, 492 U.S. at 54. The Fifth Circuit in *Jarkesy* thus took that holding out of context when it applied it to claims where (as here) the government is involved in its sovereign capacity.

³⁵² The government has petitioned for certiorari in the *Jarkesy* case. Petition for a Writ of Certiorari, SEC v. *Jarkesy*, No. 22-859 (filed Mar. 8, 2023).

³⁵³ T-Mobile/Sprint June 22, 2023 Supplemental NAL Response at 3-4.

³⁵⁴ 47 U.S.C. § 503(b)(3), (4).

³⁵⁵ See, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) ("[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch."); cf. *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (noting that a federal prosecutor's decision (continued....))

107. We also are unpersuaded by T-Mobile’s reliance on the Fifth Circuit decision in *Jarkesy* to support its nondelegation concerns. In addition to questions about the merits of the Fifth Circuit’s approach in that regard,³⁵⁶ even on its own terms, *Jarkesy* involved a scenario where the court found that “Congress offered *no guidance* whatsoever” regarding the statutory decision at issue.³⁵⁷ That is not the case here, however. Although section 503(b) alone does not expressly provide guidance regarding the choice of enforcement process, section 4(j) of the Act directs as a general matter that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”³⁵⁸ Nothing in section 503(b) precludes the applicability of these considerations to guide the Commission’s choice of enforcement process there, and the Commission has interpreted section 4(j) as informing its decision regarding the procedural protections required in adjudicatory proceedings in other contexts in the past.³⁵⁹ The circumstances here therefore are distinct from those in *Jarkesy* where “Congress offered *no guidance* whatsoever.”³⁶⁰

IV. CONCLUSION

108. Based on the record before us and in light of the applicable statutory factors, we conclude that T-Mobile willfully and repeatedly violated section 222 of the Act³⁶¹ as well as section 64.2010 of the Commission’s rules³⁶² by disclosing its customers’ location information, without their consent, to a third party who was not authorized to receive it and for failing to take reasonable steps to protect its customers’ location information. We decline to withdraw the Admonishment and, having already reduced the forfeiture by \$11,550,000 to account for eight entities that were each counted twice in the original forfeiture calculation, decline to further reduce or to cancel the forfeiture amount of \$80,080,000.

V. ORDERING CLAUSES

109. 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, T-Mobile USA, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighty million and eighty thousand (\$80,080,000) for willfully and repeatedly violating section 222 of the Act and section 64.2010 of the Commission’s rules.

not to indict a particular defendant “has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to ‘take Care that the Laws be faithfully executed’” (citation omitted); *United States v. Batchelder*, 442 U.S. 114, 121, 124, 126 (1979) (no violation of the nondelegation doctrine when Congress enacted two criminal statutes with “different penalties for essentially the same conduct” and gave prosecutors “discretion to choose between” the two statutes given that Congress had “informed the courts, prosecutors, and defendants of the permissible punishment alternatives available under each [statute],” and thereby “fulfilled its duty”).

³⁵⁶ As discussed above, Supreme Court precedent supports our contrary analysis here, and as previously noted, the government has petitioned for certiorari in the *Jarkesy* case. See *supra* note 352.

³⁵⁷ *Jarkesy*, 34 F.4th at 462.

³⁵⁸ 47 U.S.C. § 154(j).

³⁵⁹ See, e.g., *Procedural Streamlining of Administrative Hearings*, EB Docket No. 19-214, Report and Order, 35 FCC Rcd 10729, 10734, para. 14 (2020) (looking to the standards in section 4(j) to guide the decision regarding the conduct of adjudicatory proceedings on the basis of a written record without live testimony); *id.* at 10735-36, para. 18 (looking to the standards in section 4(j) to guide the decision regarding whether an adjudication should be heard by the Commission, one or more commissioners, or an ALJ).

³⁶⁰ *Jarkesy*, 34 F.4th at 462.

³⁶¹ 47 U.S.C. § 222.

³⁶² 47 CFR § 64.2010.

110. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.³⁶³ T-Mobile USA, Inc., shall send electronic notification of payment to Shana Yates, Kimbarly Taylor, and Michael Epshteyn, Enforcement Bureau, Federal Communications Commission, at shana.yates@fcc.gov, kimbarly.taylor@fcc.gov, and michael.epshteyn@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.³⁶⁴

111. In order for T-Mobile USA, Inc. to pay the proposed forfeiture, T-Mobile USA, Inc. shall notify Shana Yates at Shana.Yates@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁶⁵

- 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 159³⁶⁶ or printed CORES form³⁶⁷ 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).³⁶⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number

³⁶³ *Id.*

³⁶⁴ 47 U.S.C. § 504(a).

³⁶⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

³⁶⁶ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³⁶⁷ 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>.

³⁶⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

113. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Edward H. Smith, Senior Vice President of Public Policy and Government Affairs, and Christopher Koegel, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., c/o J. Wade Lindsay, Esq., Wilkinson Barker Knauer, LLP, 1800 M Street, N.W., Suite 800N, Washington, DC 20036, and Helgi C. Walker, Esq., and Russell B. Balikian, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of T-Mobile USA, Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027702 (April 17, 2024)

Our smartphones are always with us, and as a result these devices know where we are at any given moment. This geolocation data is especially sensitive. It is a reflection of who we are and where we go. In the wrong hands, it can provide those who wish to do us harm the ability to locate us with pinpoint accuracy. That is exactly what happened when news reports revealed that the largest wireless carriers in the country were selling our real-time location information to data aggregators, allowing this highly sensitive data to wind up in the hands of bail-bond companies, bounty hunters, and other shady actors. This ugly practice violates the law—specifically Section 222 of the Communications Act, which protects the privacy of consumer data. The Commission has long recognized the importance of ensuring that information about who we call and where we go is not for sale. In fact, these enforcement actions—leading to \$200 million in fines—were first proposed by the last Administration. By following through with this order, we once again make clear that wireless carriers have a duty to keep our geolocation information private and secure.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of T-Mobile USA, Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027702 (April 17, 2024)

For more than a decade, location-based service (LBS) providers have offered valuable services to consumers, like emergency medical response and roadside assistance. Up until the initiation of the above-captioned enforcement actions, LBS providers did so by obtaining access to certain location information from mobile wireless carriers like AT&T, Verizon, and T-Mobile. Then, in 2018, a news report revealed that a local sheriff had misused access to an LBS provider's services. That sheriff was rightly prosecuted for his unlawful actions and served jail time. Subsequently, all of the participating carriers ended their LBS programs. So our decision today does not address any ongoing practice.

This is not to say that LBS providers have ended their operations. They have simply shifted to obtaining this same type of location information from other types of entities. That is why I encouraged my FCC colleagues to examine ways that we could use these proceedings to address that ongoing practice. But my view did not prevail.

That brings us to the final Forfeiture Orders that the FCC approves today. Back in 2020, after the mobile wireless carriers exited the LBS line of business, the FCC unanimously voted to approve Notices of Apparent Liability (NALs) against the carriers. Even then, it was clear that at least one LBS provider had acted improperly. So I voted for the NALs so we could investigate the facts and determine whether or not the carriers had violated any provisions of the Communications Act.

Now that the investigations are complete, I cannot support today's Orders. This is not to say that the carriers' past conduct should escape scrutiny by a federal agency. Rather, given the nature of the services at issue, the Federal Trade Commission, not the FCC, would have been the right entity to take a final enforcement action, to the extent the FTC determined that one was warranted.

Here's why. Unlike the FTC, Congress has provided the FCC with both limited and circumscribed authority over privacy. Congress delineated the narrow contours of our authority in section 222 of the Communications Act. The services at issue in these cases plainly fall outside the scope of the FCC's section 222 authority. Indeed, today's FCC Orders rest on a newfound definition of customer proprietary network information (CPNI) that finds no support in the Communications Act or FCC precedent. And without providing advance notice of the new legal duties expected of carriers (to the extent we could adopt those new duties at all), the FCC retroactively announces eye-popping forfeitures totaling nearly \$200,000,000. These actions are inconsistent with the law and basic fairness. The FCC has reached beyond its authority in these cases.

According to the Orders, our CPNI rules now apply whenever a carrier handles a customer's location information—whether or not it relates to the customer's use of a “telecommunications service” under Title II of the Communications Act. Here, the location information was unrelated to a Title II service. The customer did not need to make a call to convey his or her location. In fact, the carrier could have obtained the customer's location even if the customer had a data-only plan for tablets. Yet the Order concludes that the carriers mishandled CPNI.

That cannot be right. Start with the definition of CPNI, which section 222 of the Communications Act defines as:

information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.¹

¹ 47 U.S.C. § 222(h)(1)(A).

That definition has two key limitations. First, the information must be of a specific type. As relevant here, CPNI must “relate to” the “location ... of use of a telecommunications service.” Second, the information must have been obtained in a specific way. The customer must have made his or her location “available to carrier” and “solely by virtue of the carrier-customer relationship.”

Take the first limitation. By requiring that the location “relate” to the “use of a telecommunications service,” the statute covers a particular type of data known as “call location information”—namely, the customer’s location *while making or receiving a voice call*. Section 222 confirms this commonsense reading elsewhere when it expressly refers to “call location information.”² These statutory references to “call location information” would make no sense if Congress intended for CPNI to cover all location information collected by a carrier, irrespective of particular calls.

The FCC confirmed that “straightforward” interpretation in a 2013 Declaratory Ruling.³ The definition of CPNI, this agency held, encompassed “telephone numbers of calls dialed and received and the location of the device at the time of the calls.”⁴ The FCC also clarified that CPNI included “the location, date, and time a handset experiences a network event, such as a dialed or received telephone call [or] a dropped call.”⁵

Although the Orders claim CPNI was at play, they do not contend that “call location information” was disclosed. Nor could they. As the Orders concede, the carriers obtained their customers’ location whenever a customer’s device pinged the carrier’s cell site, even when the device was otherwise idle. No voice call was necessary for the carrier to obtain the customer’s location. In fact, the carrier could gather the customer’s location even if the customer did not have a voice plan. So, the “location” did not “relate to” the “use” of a “telecommunications service” in any meaningful sense.

Turning to the second limitation, it seems implausible to conclude that the carrier obtained the customer’s location “*solely* by virtue of the carrier-customer relationship,” as section 222 requires. True, many of these customers might have had voice plans, thereby creating a “carrier-customer relationship.” But any Title II relationship was, at most, coincidental. The carrier could have obtained the customer’s location even in the absence of a call, and even in the absence of a voice plan.

The massive forfeitures imposed in these Orders offend basic principles of fair notice. The FCC has never held that location information other than “call location information” constitutes CPNI. Nor has the FCC stated that a carrier might be liable under our CPNI rules for location information unrelated to a Title II service and collected outside the Title II relationship. So, even if we could proscribe the conduct at issue here through a rulemaking (and I am dubious that we could), it would be inappropriate and unlawful to impose the retroactive liability that these Orders do.

² 47 U.S.C. § 222(f)(1) (ordinarily requiring “express prior authorization of the customer” for carrier disclosure of “call location information”); 47 U.S.C. § 222(d)(4) (allowing, however, carrier disclosure of “call location information” in certain emergency situations).

³ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Rcd 9609, para. 22 (2013).

⁴ *Id.* at para. 22.

⁵ *Id.* at para. 25.

In the end, these matters should have been handled by the FTC. Our CPNI rules are narrow and do not cover every piece of data collected by an FCC-regulated entity. Besides, as the Communications Act makes clear, carriers are regulated under Title II only when they are engaged in offering Title II services.⁶ In situations where an FCC-regulated entity offers a Title I service, such as mobile broadband, the FTC is the proper agency to enforce privacy and data security practices under generally applicable rules of the road. I respectfully dissent.

⁶ 47 U.S.C. § 153(51) (“A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services ...”); *see also* *FTC v. AT&T Mobility LLC*, 883 F. 3d 848, 863-64 (9th Cir. 2018) (holding that the FTC’s “common carrier” exemption to Section 5 of the FTC Act “bars the FTC from regulating ‘common carriers’ only to the extent that they engage in common-carriage activity”).

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of T-Mobile USA, Inc.*, Forfeiture Order, File No.: EB-TCD-18-00027702 (April 17, 2024)

Today, each of the major national mobile network operators faces a forfeiture for its purported failure to secure the confidentiality of its customer proprietary network information ('CPNI') as it relates to location information of network user devices. While the facts of each alleged violation are somewhat different, the enforcement calculation methodology used to arrive at the forfeitures is shared. Because I am concerned principally with that issue, together with what I view as a significant and undesirable policy upshot common across the actions that the Commission takes today, I will draft one dissent.

There is no valid basis for the arbitrary and capricious finding—enunciated in the Commission's erroneous rationale in *TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014) (*'TerraCom'*) and relied upon today—that a single, systemic failure to follow the Commission's rules (in that case, violations of sections 201(b) and 222(a) of the Act; here, a violation of section 64.2010 of the Rules) may constitute however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology. In *TerraCom*—which was resolved by consent decree and never proceeded to a forfeiture order—the Commission found that each customer record exposed by a single insecure data protection method (some 305,065 records) could be treated as having formed a separate and continuing violation. Here, the Commission purports to count individual location-based services providers ('LBS') and aggregators relied upon by each mobile network operator to arrive at its separate and distinct continuing violations.

Whether counting individual exposed customer records or LBS providers and aggregators, the clear effect of the Commission's arbitrary selection of a violation class used to increase the number violations emerging from a single act or failure to act of a regulatee alleged to be in violation of our rules is to exceed our section 503 statutory authority. Here it cannot credibly be argued that any of the mobile network operators, in operating an LBS/aggregator program, committed more than one act relevant for the purposes of forfeiture calculation. It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an "act" into its individual constituent parts, counting the members of whatever class of objects may be related to the alleged violation to arrive at whatever forfeiture amount suits a preordained outcome. In this case we exceed our statutory maximum forfeiture by a factor of, in some cases, dozens; in *TerraCom*, we asserted the right to exceed it by thousands.

What's more, the Commission ought to act prudentially here: even assuming, purely *arguendo*, that location-based CPNI were illicitly exposed, let us not forget that, at every moment, any of thousands of unregulated apps may pull GPS location information, Wi-Fi and Bluetooth signal strength, and other fragments of data indicating location from customer handsets at every moment the device is on. Indeed, this can be, and routinely is, accomplished even without consumer permission. By sending a strong market signal that any alleged violation of Commission rules regarding CPNI safekeeping (whether or not the rules actually were violated) can and will result in an outsize fine, we have effectively choked off one of the only ways that valid and legal users of consent-based location data services had to access location data for which legal safeguards and oversight actually exist.

It was available for the Commission to work with the carriers to issue consent decrees to promote best practices to develop further safeguards around location-based and aggregation services, and to actively monitor ongoing compliance in an effort to vouchsafe a regulated means of consensually sharing handset location data with legitimate users of the same. We opt, instead, to appear "tough on crime" in a way that actually reduces consumer data privacy by pushing legitimate users of location data toward unregulated data brokerage. Accordingly, I dissent.

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

In the Matter of	)	
	)	
Fostering Independent and Diverse Sources of	)	MB Docket No. 24-115
Video Programming	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: April 17, 2024

Released: April 19, 2024

Comment Date: 30 days after date of publication in the Federal Register

Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. Video consumption has increased in recent years, expedited in part by changes in watching brought on by the pandemic.¹ In light of this increased demand, we launch this proceeding to understand challenges related to distribution and supply, especially as it relates to independent programming.

2. One of the Commission's primary statutory objectives with respect to multichannel video programming is to foster a diverse, robust, and competitive marketplace for the delivery of such programming.² We recognize that competition among distributors of video programming continues to

¹ See, e.g., S. Dixon, *COVID-19's Impact On Video Consumption Worldwide 2020*, Statista (Mar. 24, 2022), <https://www.statista.com/statistics/1215173/impact-of-covid-19-on-type-of-video-consumption/#statisticContainer>; Anjali Lai, *Post-Pandemic Media Consumption: Online Streaming Accelerates A New Content Experience*, Forrester (June 21, 2021), <https://www.forrester.com/blogs/post-pandemic-media-consumption-online-streaming-accelerates-a-new-content-experience/>; Falon Fatemi, *How the Pandemic Has Changed Video Content and Consumption*, Forbes (Feb. 1, 2021), <https://www.forbes.com/sites/falonfatemi/2021/02/01/how-the-pandemic-has-changed-video-content-and-consumption/?sh=d28a3566ec00>; Nielsen, *Connected TV Usage Remains Above Pre-COVID-19 Levels As Traditional TV Viewing Normalizes* (June 2020), <https://www.nielsen.com/insights/2020/connected-tv-usage-remains-above-pre-covid-19-levels-as-traditional-tv-viewing-normalizes>.

² See, e.g., 47 U.S.C. § 521 ("The purposes of this subchapter are to . . . (4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public."); *id.* § 532(a) ("The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems."); *id.* § 533(f)(2) ("[T]he Commission shall, among other public interest objectives (A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer; (B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors; . . . (G) not impose limitations which would impair the development of diverse and high quality video programming."); *id.* § 536 (directing the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors"); *id.* § 548 (stating that the purpose of this section is "to (continued....)

evolve, and consumers today have many video programming platforms from which to choose. Nevertheless, stakeholders continue to raise concerns that certain marketplace practices by distributors may hinder independent video programmers³ from reaching consumers and deprive them of access to their choice of diverse programming—one of the benefits of enhanced competition in the video marketplace. Specifically, independent programmers contend that their ability to thrive in the marketplace and reach consumers today depends on their ability to negotiate and secure carriage on multichannel video programming distributors (MVPDs) or online video distributors (OVDs).⁴ Despite the changes in the way that consumers access video programming—including via the growing number of platforms available to video consumers and the protracted decline in MVPD subscribers⁵—independent programmers have consistently asserted over the past several years that certain practices by incumbent

(Continued from previous page)

promote the public interest ... by increasing competition and diversity in the multichannel video programming market ... and to spur the development of communications technologies”). See 1992 Cable Act § 2(a)(6) (finding that “[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media”); *id.* § 2(b)(1) (“[Policy to] promote the availability to the public of a diversity of views and information through cable television and other video distribution media...”); see also H.R. Conf. Rep. No. 102-862, at 2, 1992 U.S.C.C.A.N. 1231, 1232.

³ For purposes of this Notice of Proposed Rulemaking, we propose to define an “independent video programmer” or “independent programmer” as a non-broadcast programmer that (1) is not vertically integrated with an MVPD and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses. We also propose to use the definition of “affiliated” set forth in section 76.1300(a) of the Commission’s rules for purposes of this definition. 47 CFR 76.1300(a) (providing that “entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities”). We seek comment on these proposals.

⁴ See, e.g., AMC Networks, Inc. Comments, MB Docket No. 20-70, at 4 (rec. May 18, 2020) (asserting that MVPD distribution “is still the primary vehicle for programmers to attract and retain viewers, build viewer loyalty, and attract advertising”); at 2-3 (asserting that certain practices of vertically-integrated MVPDs can prevent independent programmers from innovating with OVDs or from licensing their content to OVDs at an advantageous rate). For purposes of this proceeding, an OVD is an entity that distributes video programming: (1) by means of the Internet or other Internet Protocol (IP)-based transmission path; (2) not as a component of an MVPD subscription or other managed video service; and (3) not solely to customers of a broadband Internet access service owned or operated by the entity or its affiliates. *Communications Marketplace Report*, GN Docket No. 20-60, 36 FCC Rcd 2945, 3048, n.440 (2020) (*2020 Communications Marketplace Report*) (defining OVD); see also *Applications of Charter Communications, Inc. et al. For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6340, para. 34, n.83 (2016) (*Charter-TWC Order*), set aside in part on other grounds, *Competitive Enterprises Institute v. FCC*, 970 F.3d 372 (D.C. Cir. 2020). OVD service offerings include Advertising-Based Video On Demand providers (AVODs), which allow consumers to access video programming free of charge; Subscription Video On Demand providers (SVODs), which charge consumers a recurring subscription fee for access to the provider’s video content; Transactional Video On Demand providers (TSODs), which allow consumers to purchase specific video content (movies, television programs, or live events) on a transactional or per program basis; and virtual Multichannel Video Programming Distributors (vMVPDs), which offer consumers access to a package of streaming linear channels. *2020 Communications Marketplace Report*, 36 FCC Rcd at 3057-61, paras. 178-85. Whether certain types of OVDs are MVPDs remains an open question, which this NPRM does not address.

⁵ *8 Million Homes Dump Big TV Channel Bundle In Last 12 Months*, nScreenMedia.com (Aug. 15, 2023), <https://nscreenmedia.com/8-m-homes-dump-big-tv-channel-bundle-q2-2023/> (noting that the decline in MVPD subscribership continues to accelerate, with a year-over-year decline from 8.1 percent in Q2 2022 to 13.3 percent in Q2 2023); *Communications Marketplace Report*, GN Docket No. 22-203, FCC 22-103, paras. 218-21 (Dec. 30, 2022) (*2022 Communications Marketplace Report*) (noting that MVPD subscribership has been declining since 2013, including a loss of 6.7 million video subscribers between the end of 2020 and 2021).

cable operators and other MVPDs have impeded their ability to reach consumers across all video platforms, leading to less competition and fewer choices for those who watch.⁶

3. Through this Notice of Proposed Rulemaking (NPRM), we initiate a new proceeding to seek comment on the current state of the marketplace for diverse and independent programming. We also seek comment on the obstacles faced by independent programmers seeking MVPD carriage and carriage on online platforms and how this impacts consumers. In order to alleviate marketplace obstacles that may hinder independent programmers from reaching consumers, we propose to prohibit two types of contractual provisions in program carriage agreements between independent programmers and MVPDs: (i) most favored nation (MFN) provisions, and (ii) unreasonable alternative distribution method (ADM) provisions. We also seek comment below on current program bundling practices.

II. BACKGROUND

4. In 2016, the Commission launched a proceeding in MB Docket No. 16-41 to examine how certain contractual provisions in carriage agreements between programmers and distributors, such as most favored nation (MFN) and alternative distribution method (ADM) clauses, impact programming competition, innovation, and diversity.⁷ In general, an MFN provision entitles an MVPD to more favorable economic or non-economic contract terms that a video programming vendor has provided to another video programming distributor, whether an MVPD or an OVD.⁸ An ADM provision generally

⁶ See, e.g., AMC Networks, Inc. Comments, MB Docket No. 20-70, at 2-3 (rec. May 18, 2020) (asserting that independent programmers routinely encounter demands from vertically integrated MVPDs that put them at a disadvantage to the MVPD's affiliated networks, including demands for most favored nation clauses, prohibitions on direct-to-consumer or a la carte offerings, subscription video-on-demand holdbacks, and rights of conversation and offer provisions that require the programmers to approach an MVPD and engage in a conversation with them before the programmer is permitted to conclude a deal with an online video distributor for new content licenses or content development); beIN Sports, LLC Reply Comments, MB Docket No. 20-70, at 5-6 (rec. June 1, 2020) (asserting that "[v]ertically integrated MVPDs use [most favored nation provisions] as levers to prevent independent programmers from obtaining the favorable rates and conditions of carriage from smaller MVPDs that they could otherwise obtain"); Ride Television Network, Newsmax TV, HDNet, LLC, KSE Outdoor Sportsman Group, WeatherNation TV Comments, MB Docket No. 20-70, at 2 (rec. May 18, 2020) (asserting that "[i]ndependent programmers are forced to agree to onerous most favored nation clauses which impede their ability to negotiate on a balanced playing field"). See also *2020 Communications Marketplace Report*, 36 FCC Rcd at 3137, para. 347 ("AIM also asserts that vertically integrated MVPDs impose onerous contract terms on programmers, including most favored nations requirements and restrictions on alternative means of content distribution that stifle innovation and reduce diversity and competition.").

⁷ The Commission initially issued a Notice of Inquiry in MB Docket No. 16-41 to explore the principal challenges independent video programmers face in gaining carriage of their content on both traditional and emerging distribution platforms and determine whether further action is needed to promote a diverse, robust, and competitive programming marketplace. *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Inquiry, 31 FCC Rcd 1610, 1611, para. 2 (2016) (*2016 Independent Programming NOI*). The Commission subsequently issued an NPRM to seek comment on proposals to prohibit certain practices used by some MVPDs in their negotiations for carriage of video programming that may impede the entry and growth in the marketplace of independent programmers. *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Proposed Rulemaking, 31 FCC Rcd 11352 (2016) (*2016 Independent Programming NPRM*).

⁸ *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, 9218-19, para. 228 & n.655 (2015) (*AT&T-DIRECTV Order*). MFN rights can be conditional or unconditional. A conditional MFN provision entitles an MVPD to certain contractual rights that the video programming vendor has offered or granted to another video programming distributor, subject to the MVPD's acceptance of related terms and conditions contained in that other distributor's agreement. An unconditional MFN provision, by contrast, does not require that the MVPD accept any related terms and conditions in order to be entitled to receive the contractual rights and benefits granted to the other video programming distributor. *Id.* at 9219 n.655.

prohibits or restricts a video programming vendor from exhibiting its programming on OVDs, often for a specified period of time (sometimes referred to as a “holdback period” or “window”) following the programming’s original linear airing, or until certain conditions are met.⁹ In 2020, having not received any new comments in the proceeding in over two years, Commission staff terminated this proceeding under the dormant proceedings rule.¹⁰

5. Following the termination of the proceeding, the Commission released the *2020 Communications Marketplace Report* which identified the concerns of independent programmers indicating that MFN and ADM provisions continue to stifle innovation and reduce diversity and competition.¹¹ We conclude that it is appropriate to look anew at the issues raised in the MB Docket No. 16-41 proceeding to determine whether current circumstances warrant further action. While we intend to take a fresh look at the state of the marketplace for independent and diverse video programming in the instant proceeding, we recognize that the record in MB Docket No. 16-41 provides useful background and context.¹² Accordingly, we summarize below pertinent portions of the record in that proceeding.

A. NOI in MB Docket No. 16-41

6. In February 2016, the Commission issued a Notice of Inquiry (*NOI*) in MB Docket No. 16-41 to explore the state of independent and diverse programming.¹³ The proceeding was initiated in response to concerns raised by independent video programmers that some practices of cable operators and other MVPDs limit the ability of independent programmers to reach viewers.¹⁴ The *NOI* invited comment on a number of issues, including the state of the marketplace for independent programming;¹⁵ contractual barriers faced by independent programmers that can hinder the development of competition and consumer choice, such as demands by MVPDs for restrictive MFN provisions and ADM provisions in program carriage agreements;¹⁶ the impact of program bundling arrangements on the ability of independent

⁹ *2016 Independent Programming NOI*, 31 FCC Rcd at 1615, para. 10. The term “linear programming” is generally understood to refer to video programming that is prescheduled by the programmer. *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 16001 n.26 (2014). ADM provisions restrict distribution on OVD platforms. We note that an ADM provision would run afoul of section 616(a)(2) of the Communications Act of 1934, as amended (the Act), and the Commission’s program carriage rules if the contracting MVPD “coerc[ed] a video programming vendor to provide . . . exclusive rights against other [MVPDs] as a condition of carriage on a system.” 47 U.S.C. § 536(a)(2); 47 CFR § 76.1301(b).

¹⁰ *Termination of Certain Proceedings as Dormant*, CG Docket No. 20-158, Order, 35 FCC Rcd 10498 (CGB 2020) (*Termination of Certain Proceedings as Dormant*); *Consumer & Governmental Affairs Bureau Seeks Comment on Termination of Certain Proceedings as Dormant*, CG Docket No. 20-158, Public Notice, 35 FCC Rcd 5525 (CGB 2020). See 47 § CFR 0.141(h).

¹¹ *2020 Communications Marketplace Report*, 36 FCC Rcd at 3137, para. 347 (“AIM also asserts that vertically integrated MVPDs impose onerous contract terms on programmers, including most favored nations requirements and restrictions on alternative means of content distribution that stifle innovation and reduce diversity and competition.”).

¹² Given the time that has elapsed since the record in the MB Docket No. 16-41 proceeding closed, we do not intend to rely on the comments in that proceeding to support further action on the issues raised herein. Accordingly, we ask any interested parties that previously submitted comments in the MB Docket No. 16-41 proceeding to submit new comments that reflect current marketplace conditions in the instant docket.

¹³ *2016 Independent Programming NOI*, 31 FCC Rcd at 1611, para. 2.

¹⁴ *Id.* at 1612, para. 4.

¹⁵ *Id.* at 1611-12, para. 3.

¹⁶ *Id.* at 1612-16, paras. 5-14.

programmers to obtain carriage;¹⁷ and ways to alleviate marketplace obstacles faced by independent programmers.¹⁸

7. In their comments in response to the *NOI*, independent programmers indicated that although the video marketplace was evolving toward greater competition, diversity, and innovation, they have faced significant challenges to entry and growth in the marketplace, largely due to MFN and ADM provisions in carriage agreements with MVPDs that limit a programmer's ability to license its content to other distributors.¹⁹ Independent programmers asserted that MFN provisions hinder their ability to secure the widest possible carriage by deterring them from licensing their content to OVDs.²⁰ This in turn hampers the ability of independent programmers to grow their revenues and launch new or innovative program offerings.²¹ Commenters expressed particular concern about unconditional MFN clauses, which they claimed have a profoundly negative impact on competition, programming diversity, and innovation.²² Because unconditional MFN provisions entitle an MVPD to receive the best terms and conditions from another distribution agreement without obligating it to agree to the reciprocal obligations of the other distributor that were the consideration for such terms and conditions, commenters asserted that such provisions unduly limit programmers' flexibility to develop creative ways to grow their

¹⁷ *Id.* at 1616-18, paras. 15-18.

¹⁸ *Id.* at 1620, para. 22. In connection with the *NOI*, the Commission held two public workshops to examine the state of competition, diversity, and innovation in the marketplace. *Media Bureau Announces Public Workshop on the State of the Video Marketplace*, Public Notice, 31 FCC Rcd 1785 (MB 2016); *Media Bureau Announces Second Public Workshop on the State of the Video Marketplace*, Public Notice, 31 FCC Rcd 2191 (MB 2016). The first workshop, held in March 2016, focused on trends in the video marketplace and challenges faced by distributors of video programming. *Media Bureau Announces Agenda for Public Workshop on the State of the Video Marketplace on March 21, 2016*, Public Notice, 31 FCC Rcd 1975 (MB 2016). The second workshop, held in April 2016, examined marketplace obstacles to the provision of independent and diverse video programming to consumers. *Media Bureau Announces Agenda for Second Public Workshop on the State of the Video Marketplace on April 25, 2016*, Public Notice, 31 FCC Rcd 3525 (MB 2016).

¹⁹ beIN Sports LLC Comments, MB Docket No. 16-41, at 2 (rec. Mar. 30, 2016) (beIN Sports NOI Comments); INSP, LLC Comments, MB Docket No. 16-41, at 19-24 (rec. Mar. 30, 2016) (INSP NOI Comments); KSE Media Ventures, LLC Comments, MB Docket No. 16-41, at 2-4 (rec. Mar. 30, 2016) (KSE Media Ventures NOI Comments); RFD-TV Comments, MB Docket No. 16-41, at 2-3, 21 (rec. Mar. 30, 2016) (RFD-TV NOI Comments) (all asserting that restrictive MFN and ADM provisions constrain the ability of independent programmers to compete and limit distribution through alternative platforms).

²⁰ American Cable Association Comments, MB Docket No. 16-41, at 33-34 (rec. Mar. 30, 2016) (ACA NOI Comments) (arguing that, as a result of MFNs imposed by large MVPDs, independent programmers are deterred from executing carriage agreements with smaller MVPDs because those programmers cannot give smaller MVPDs the flexibility they need); beIN Sports LLC Reply, MB Docket No. 16-41, at 8 (rec. Apr. 16, 2016) (beIN Sports NOI Reply) (asserting that although both smaller MVPDs and OVDs have offered carriage at fees lower than those paid by other distributors, it has declined such offers due to MFN provisions that would obligate it to offer the same rate terms to existing distributors, thereby reducing revenue); T-Mobile USA Inc. Reply, MB Docket No. 16-41, at 4-5 (rec. Apr. 16, 2016) (T-Mobile NOI Reply) (highlighting concerns that MFN provisions make it difficult for programmers to make carriage deals with new or smaller distributors).

²¹ INSP NOI Comments at 21. Commenters also asserted that by limiting independent programmers' growth, MFN provisions may lead to less diversity in the sources and variety of programming available to consumers, including minority and underserved audiences. ACA NOI Comments at 33 (arguing that MFN provisions imposed by large MVPDs hinder small cable operators from offering diverse content to their subscribers); beIN Sports NOI Reply at 9-10 (contending that MFN provisions lead to fewer choices for consumers, especially minority and niche audiences).

²² TheBlaze NOI Comments at 5-6; T-Mobile NOI Reply at 5.

business.²³ Commenters argued that ADM provisions similarly threaten the viability of independent programmers by impeding their ability to secure broader distribution that would enable them to showcase or promote content to potential customers, investors, and viewers, which is critical to attract investment necessary to their survival.²⁴ In addition to the adverse impact on independent programmers, commenters contended that restrictive MFN and ADM clauses, especially when enforced in tandem,²⁵ stifle competition and innovation in the marketplace for programming distribution.²⁶

8. Large MVPDs, by contrast, generally defended the use of MFN and ADM provisions as procompetitive and pro-consumer.²⁷ They maintained that MFN provisions do not prevent programmers from licensing content to OVDs or other distributors, but rather, ensure that MVPDs are able to secure the same rights and service offerings as other distributors on the same terms and conditions, thereby allowing them to respond to changes in consumer demand and remain competitive.²⁸ They also maintained that programmers are unlikely to forgo lucrative licensing opportunities with OVDs by agreeing to inflexible MFN provisions with MVPDs,²⁹ and that MFN provisions have been found to impart public interest benefits.³⁰ Large MVPDs asserted, moreover, that ADM provisions are intended to allow MVPDs to protect their investment in programming, not to foreclose competition from OVDs.³¹

9. In addition, a number of commenters asserted that vertically-integrated programmers and large media entities are able to leverage their marquee programming to force carriage of numerous, less

²³ Hispanic Information and Telecommunications Network, Inc. Comments, MB Docket No. 16-41, at 5 (rec. Mar. 20, 2016) (HITN NOI Comments); RFD-TV NOI Comments at 2-3, 21 (claiming that obligations created by MFN provisions hinder programmers' ability to negotiate creative distribution agreements). For example, programmers claimed that unconditional MFN clauses make it prohibitively costly for them to expand their viewership by offering special terms or inducements to OVDs in exchange for higher per-subscriber carriage fees or other consideration. beIN Sports NOI Reply at 10-11; TheBlaze NOI Comments at 5-6; INSP Comments at 19-20.

²⁴ TheBlaze NOI Comments at 6-7.

²⁵ KSE Media Ventures NOI Comments at 5-6 (contending that this interplay between ADM and MFN provisions precludes online distribution at any rate or experimentation with new distribution models).

²⁶ beIN Sports NOI Reply at 16; INSP NOI Comments at 16, 21; Public Knowledge NOI Reply at 4, 19-20; T-Mobile NOI Reply at 5-6 (arguing that MFN and ADM clauses delay innovative methods of content distribution and result in less competition in the video marketplace). Commenters further argued that to the extent that MFN and ADM clauses deter programmers from offering unique or favorable terms to OVDs, such clauses impede the development of new and diverse platforms, technologies, service offerings, and business models. beIN Sports NOI Reply at 8; TheBlaze NOI Comments at 2; Common Cause Comments, MB Docket No. 16-41, at 4 (rec. Mar. 29, 2016) (Common Cause NOI Comments); KSE Media Ventures NOI Comments at 4-5.

²⁷ AT&T Comments, MB Docket No. 16-41, at 12-13 (rec. Mar. 30, 2016) (AT&T NOI Comments); Comcast Corp. and NBCUniversal Media, LLC Comments, MB Docket No. 16-41, at 26 (rec. Mar. 30, 2016) (Comcast-NBCU NOI Comments).

²⁸ Comcast-NBCU NOI Comments at 27-28. *See also* AT&T NOI Comments at 13 (arguing that MFN provisions are not a means of precluding competition, but rather, a means of ensuring that MVPDs can compete fairly).

²⁹ Comcast-NBCU NOI Comments at 29.

³⁰ *Id.* at 26-27, 31 (quoting *Blue Cross & Blue Shield United of Wis. v. Marshfield Clinic*, 65 F.3d 1406, 1415 (7th Cir. 1995), in arguing that MFN provisions are "standard devices by which buyers try to bargain for low prices, by getting the seller to agree to treat them as favorably as any of their other customers. . . . [T]hat is the sort of conduct that the antitrust laws seek to encourage.").

³¹ AT&T NOI Comments at 13 (asserting that windowing, as used by AT&T, prevents a programmer from giving away for free content for which AT&T has paid licensing fees for a limited period after AT&T distributes that content); Comcast-NBCU NOI Comments at 25, 30 (claiming that the use of ADM provisions is a longstanding industry practice that allows content creators to be fully compensated for their investment and is critical to the business economics of the content production industry).

desirable channels.³² Such forced bundling, they stated, reduces channel capacity and opportunities available for independent programmers.³³ On the other hand, large media companies defended the use of program bundling, arguing that content owners do not have the market power to force MVPDs into bundling,³⁴ that bundling helps new niche and diverse programming grow their audiences by encouraging consumers to sample such programming,³⁵ and that bundling lowers consumer prices through reduced transaction and information costs.³⁶

B. NPRM in MB Docket No. 16-41

10. In September 2016, the Commission issued an *NPRM* in MB Docket No. 16-41.³⁷ Based on the record received in response to the NOI, the *NPRM* proposed to adopt rules that prohibit certain practices some MVPDs use in their negotiations for carriage of video programming that may impede competition, diversity, and innovation in the video marketplace.³⁸

1. Proposed Prohibition on Unconditional MFNs Provisions

11. In the *NPRM*, the Commission proposed to adopt a rule prohibiting the inclusion of unconditional MFN provisions in carriage agreements between MVPDs and independent video programming vendors.³⁹ Although the Commission acknowledged that some MFN provisions may have

³² ACA NOI Comments at 13-14; AT&T NOI Comments at 14; Herring NOI Comments at 2-3; Free Press Comments, MB Docket No. 16-41, at 11 (rec. Mar. 30, 2016) (Free Press NOI Comments); INSP NOI Comments at 6-7; ITTA—The Voice of Mid-Size Communications Companies Comments, MB Docket No. 16-41, at 3-4 (rec. Mar. 30, 2016) (ITTA NOI Comments); T-Mobile NOI Comments at 7; One World Sports Reply Comments, MB Docket No. 16-41, at 2, 6, 10 (rec. Apr. 19, 2016) (OWS NOI Reply).

³³ ACA NOI Comments at 18; AT&T NOI Comments at 14-15; RFD-TV NOI Comments at 2, 20; Ride TV NOI Comments at 3; Aspire Channel, LLC and UP Entertainment, LLC Comments, MB Docket No. 16-41, at 2-3 (rec. Mar. 30, 2016) (Aspire/UP NOI Comments); INSP NOI Comments at 2-3; HITN NOI Comments at 4; TheBlaze NOI Comments at 8; OWS NOI Reply at 3, 13; MAVTV Motorsports Network Reply Comments, MB Docket No. 16-41, at 2 (rec. Apr. 18, 2016) (MAVTV NOI Reply); ITTA NOI Comments at 3-4; Free Press NOI Comments at 12; Free Press Reply Comments, MB Docket No. 16-41, at 5 (rec. Apr. 19, 2016) (Free Press NOI Reply). For example, Aspire/UP noted that rural MVPDs that want the 10 most requested channels must pay for and distribute as many as 120-125 additional networks, leaving little capacity available for independent channels. Aspire/UP NOI Comments at 2-3 (citing OPASTCO-NTCA). See also ACA NOI Comments at 24; AT&T NOI Comments at 14-15; Free Press NOI Comments at 12; Public Knowledge NOI Reply at 8; ITTA NOI Comments at 3-4; Verizon Comments, MB Docket No. 16-41, at 2-3 (rec. Mar. 30, 2016) (Verizon NOI Comments) (arguing that forced bundling results in increased costs for MVPDs, reducing financial resources that otherwise could be committed to independent channels).

³⁴ National Association of Broadcasters Comments, MB Docket No. 16-41, at 4 (rec. Mar. 30, 2016) (NAB NOI Comments); CBS Corp., The Walt Disney Co., Time Warner Inc., 21st Century Fox, Inc., and Viacom, Inc. Reply Comments, MB Docket No. 16-41, at 2 (rec. Apr. 19, 2016) (Content Companies NOI Reply).

³⁵ NAB NOI Comments at 6-7; Comcast/NBCU NOI Comments at 32-33; Content Companies NOI Reply at 4-5.

³⁶ NAB NOI Comments at 6; Comcast/NBCU NOI Comments at 32; Content Companies NOI Reply at 4-5.

³⁷ *2016 Independent Programming NPRM*, 31 FCC Rcd at 11352, para. 1.

³⁸ *Id.*

³⁹ *Id.* at 11362, para. 18. The Commission proposed to define an unconditional MFN provision as “a provision that entitles an MVPD to contractual rights or benefits that an independent video programming vendor has offered or granted to another video programming distributor, without obligating the MVPD to accept any terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other video programming distributor’s agreement, and with which the MVPD can reasonably comply technologically and legally.” *Id.*

legitimate public interest justifications,⁴⁰ it found that unconditional MFN provisions that permit an MVPD to “cherry pick” the most favorable contract terms “appear designed to discourage or foreclose the wider distribution of video content, including on online platforms.”⁴¹ Consistent with the conditions imposed by the Department of Justice in approving the Charter-TWC transaction,⁴² the Commission tentatively concluded that the potential harms to competition, diversity, and innovation resulting from unconditional MFN provisions outweighed any potential public interest benefits.⁴³

12. Commenters overwhelmingly supported the Commission’s proposal to prohibit unconditional MFN provisions.⁴⁴ They asserted that unconditional MFN provisions produce no public interest benefits⁴⁵ and inhibit independent programmers from entering into innovative, pro-consumer

⁴⁰ *Id.* at 11363, para. 19. For example, the Commission noted that some MFN provisions can facilitate efficient negotiations by enabling well-informed positions, encourage investment in programming by enabling MVPDs to adjust contract terms after an initial agreement is executed, and broaden MVPD subscribers’ access to video content by allowing MVPDs to secure additional rights to programming. *Id.* (citing AT&T NOI Comments at 12-13; Comcast-NBCU NOI Comments at 27 (asserting that the ability to adjust contract terms bestowed by MFN provisions benefits independent programmers by increasing the chances of their carriage and by facilitating longer term carriage arrangements, which ultimately benefits consumers), at 24-26 (contending that MFN provisions ensure that MVPDs obtain the same rights on the same terms and conditions as other distributors)).

⁴¹ *2016 Independent Programming NPRM*, 31 FCC Rcd at 11363, para. 19.

⁴² *See, e.g.*, DOJ Charter-TWC Proposed Final Judgment at 5, Section IV.B.2 (prohibiting Charter-TWC from entering into or enforcing any agreement that grants it unconditional MFN status with respect to OVDs). In the *AT&T-DIRECTV Order*, the Commission declined to impose conditions on the use of MFN provisions, finding that the proceeding did not have a record to establish that the competitive impact of MFN provisions warranted a general condition restricting their use. *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9222, para. 237 (2015) (*AT&T-DIRECTV Order*). The Commission, however, concluded that the record in the MB Docket No. 16-41 proceeding demonstrated the competitive harms resulting from unconditional MFN provisions. *2016 Independent Programming NPRM*, 31 FCC Rcd at 11364 n.88.

⁴³ *2016 Independent Programming NPRM*, 31 FCC Rcd at 11364, para. 20.

⁴⁴ beIN Sports, LLC Comments, MB Docket No. 16-41, at 11 (rec. Jan. 26, 2017) (beIN Sports NPRM Comments); Cinemai Comments, MB Docket No. 16-41, at 5 (rec. Jan. 26, 2017) (Cinemai NPRM Comments); FUSE Media, Inc. Comments, MB Docket No. 16-41, at 1 (rec. Jan. 26, 2017) (FUSE NPRM Comments); KSE Media Ventures, LLC Comments, MB Docket No. 16-41, at 1 (rec. Jan. 26, 2017) (KSE Media Venture NPRM Comments); INSP, LLC Comments, MB Docket No. 16-41, at 23 (rec. Jan. 26, 2017) (INSP NPRM Comments); ITTA—The Voice of Mid-Size Communications Companies Comments, MB Docket No. 16-41, at 2 (rec. Jan. 26, 2017) (ITTA NPRM Comments); U.S. Senator Claire McCaskill Comments, MB Docket No. 16-41, at 1 (rec. Feb. 9, 2017) (McCaskill NPRM Comments); NTCA—The Rural Broadband Association Comments, MB Docket No. 16-41, at 7 (rec. Jan. 26, 2017) (NTCA NPRM Comments); RFD-TV Comments, MB Docket No. 16-41, at 9-10 (rec. Jan. 26, 2017) (RFD-TV NPRM Comments); Public Knowledge Reply Comments, MB Docket No. 16-41, at 2 (rec. Feb. 22, 2017) (Public Knowledge NPRM Reply); T-Mobile USA, Inc. Reply Comments, MB Docket No. 16-41, at 4 (rec. Feb. 22, 2017) (T-Mobile NPRM Reply); Writers Guild of America, West, Inc. Comments, MB Docket No. 16-41, at 9 (rec. Jan. 26, 2017) (WGAW NPRM Comments).

⁴⁵ Cinemai NPRM Comments at 5; INSP NPRM Comments at iii; ITTA NPRM Comments at 8; KSE Media Ventures NPRM Comments at 4.

carriage deals with small MVPDs and OVDs.⁴⁶ Comcast-NBCU argued that the proposal to prohibit unconditional MFNs was misguided because they can be pro-competitive and pro-consumer.⁴⁷

2. Prohibition on Unreasonable ADM Provisions

13. The Commission further proposed to adopt a rule that prohibits the inclusion of an unreasonable ADM provision in a carriage agreement between an MVPD and an independent video programming vendor.⁴⁸ The Commission tentatively concluded that in determining whether a particular ADM provision is “unreasonable,” it would consider, among other factors, the extent to which an ADM provision prohibits an independent programmer from licensing content to other distributors, including OVDs.⁴⁹ In addition, the Commission tentatively concluded that certain ADM provisions are unlikely to yield any procompetitive benefits that would outweigh the attendant public interest harms and should be deemed presumptively unreasonable.⁵⁰ The Commission also tentatively concluded that certain ADM provisions should be deemed presumptively reasonable such as those that bar an independent programmer from distributing programming, for which an MVPD has agreed to pay, to consumers for free over the Internet for a limited period after the programming’s initial airing on a linear MVPD service,⁵¹ or grant an MVPD the exclusive right to distribute an independent video programming vendor’s content.⁵²

14. The majority of commenters that addressed the issue supported the Commission’s proposal to prohibit unreasonable ADM provisions, asserting that unreasonable ADMs harm independent programmers’ ability to compete on emerging online and mobile platforms.⁵³ Comcast-NBCU, however,

⁴⁶ beIN Sports NPRM Comments at 3; Fuse NPRM Comments at 1; Cinemai NPRM Comments at 5; INSP NPRM Comments at 23; ITTA NPRM Comments at 2; KSE Media Ventures NPRM Comments at 3; NTCA NPRM Comments at 7; RFD-TV NPRM Comments at 10-11. Commenters also asserted that unconditional MFN provisions facilitate standardization of price and non-price terms and can facilitate *de facto* collusion among MVPDs and inhibit the entry of new competitors into the multichannel video distribution market. INSP NPRM Comments at 23; McCaskill NPRM Comments at 9. Additionally, commenters maintained that as a result of unconditional MFNs, independent programmers forfeit revenue growth and lose the ability to launch new or innovative program offerings, ultimately leading to less diversity in sources and programming available to consumers. beIN Sports NPRM Comments at 3; FUSE NPRM Comments at 1; INSP NPRM Comments at 23; ITTA NPRM Comments at 8.

⁴⁷ Comcast Corp. and NBCUniversal Media, LLC Comments, MB Docket No. 16-41, at 16-17 (rec. Jan. 26, 2017) (Comcast-NBCU NPRM Comments) (asserting that unconditional MFNs ensure that MVPD subscribers can enjoy the full value of their subscriptions and may increase the likelihood that an MVPD will take the risk of carrying an independent or diverse network). Comcast-NBCU also contended that unconditional MFNs can produce public interest benefits by, for example, ensuring that a programmer delivers streams of programming formatted in accordance with the most updated technology if the programmer is making programming available to other MVPDs in the updated format. *Id.* at 20.

⁴⁸ *2016 Independent Programming NPRM*, 31 FCC Rcd at 11365, para. 23. The Commission found, based on the record, that “it appears that certain restrictive ADM provisions have no discernibly pro-competitive justifications and have an adverse impact on the provision of diverse programming sources to consumers.” *Id.*

⁴⁹ *Id.* at 11366, para. 24.

⁵⁰ *Id.* Such ADM provisions included those that: (i) bar an independent programmer from licensing content, for an extended time period or indefinitely, to an OVD that distributes content for free to consumers; (ii) bar an independent programmer from licensing content, for any period of time, to an OVD that distributes content to paying subscribers; (iii) bar an independent programmer from licensing content to an OVD unless or until the OVD meets conditions that are difficult to satisfy in a timely manner or are designed to undermine the OVD’s ability to compete; or (iv) provide for any pecuniary or non-pecuniary penalty or adverse impact on an independent programmer for the provision of its video programming to an OVD. *Id.*

⁵¹ *Id.* at 11367, para. 26.

⁵² *Id.* at 11367, para. 28.

⁵³ ACA NPRM Comments at 17; beIN Sports NPRM Comments at 13-14; Cinemai NPRM Comments at 5-6; FUSE NPRM Comments at 7-8; McCaskill NPRM Comments at 1; INSP NPRM Comments at 25-26; KSE Media

(continued....)

maintained that prohibiting “unreasonable” ADMs, as defined by the Commission, would not serve the public interest because overly restrictive ADMs had largely fallen by the wayside as online distribution became a more valuable outlet for content companies.⁵⁴

3. Program Bundling and Other Marketplace Practices

15. The Commission requested comment in the *NPRM* on what, if any, additional rules it should consider to advance competition, diversity, and innovation in the marketplace.⁵⁵ For example, it requested further input on bundling practices by video programming vendors, including how bundling practices affect MVPDs’ ability to carry independent programmers, whether small MVPDs face greater demands to accept bundles than large MVPDs, and how bundling impacts consumer costs, choice, and access to diverse programming.⁵⁶ A number of commenters urged the Commission to address forced bundling, arguing that it consumes scarce resources, including bandwidth, channel capacity, and funds, resulting in the displacement of independent programming.⁵⁷ Commenters also asserted that forced bundling results in increased costs and less diversity of programming for consumers.⁵⁸ Large media groups, by contrast, argued that the Commission should reject calls to ban bundling practices.⁵⁹ These groups contended that the widespread industry practice of bundling packages of discounted content generates multiple pro-competitive and pro-consumer benefits, including reduced transaction costs, economies of scale, and enhanced program quality and diversity.⁶⁰

III. DISCUSSION

A. State of the Marketplace for Independent Programming

16. It has been almost seven years since the comment cycle in the MB Docket No. 16-41 proceeding closed in 2017,⁶¹ and we seek comment on developments and changes in the marketplace for

(Continued from previous page)

Ventures NPRM Comments at 10; NTCA NPRM Comments at 7-8; RFD-TV NPRM Comments at 8-10; T-Mobile NPRM Reply at 5; WGAW NPRM Comments at 9. Examples of unreasonable ADM provisions cited by commenters include restrictions on the number of hours per month of content that may be provided online; restrictions on promoting or offering certain content online; restrictions on live streaming of sports and other highly desirable programming; and restrictions on the days and times when content may be made available on alternative platforms. beIN Sports NPRM Comments at 14; FUSE NPRM Comments at 8; INSP NPRM Comments at 26.

⁵⁴ Comcast-NBCU NPRM Comments at 21-22. Comcast asserted that ADMs at that time were usually limited to prohibiting free online distribution of substantial network content for a limited period of time during which an MVPD has program distribution rights for which it usually paid substantial licensing fees. *Id.* at 22.

⁵⁵ *2016 Independent Programming NPRM*, 31 FCC Rcd at 11369, para. 33.

⁵⁶ *Id.*

⁵⁷ ACA NPRM Comments at 3-5; beIN Sports NPRM Comments at 10; Cinemai NPRM Comments at 3-4; FUSE NPRM Comments at 5; INSP NPRM Comments at 15; ITTA NPRM Comments at 2; NTCA NPRM Comment at 5; RFD-TV Comments at 12-13.

⁵⁸ beIN Sports NPRM Comments at 17; INSP NPRM Comments at 19-20; ITTA NPRM Comments at 2; NTCA NPRM Comment at 5; RFD-TV Comments at 13.

⁵⁹ Comcast-NBCU NPRM Comments at 40; CBS Corporation, The Walt Disney Company, Time Warner Inc., 21st Century Fox, Inc., and Viacom Inc. Comments, MB Docket No. 16-41, at 4 (rec. Jan. 26, 2017); National Association of Broadcasters Comments, MB Docket No. 16-41, at 2 (rec. Jan. 26, 2017).

⁶⁰ Comcast-NBCU NPRM Comments at 40; Content Companies NPRM Comments at 4; NAB NPRM Comments at 2-3. These groups further asserted that bundling of programming networks can create opportunities for new, diverse, and niche content to flourish by encouraging viewers to sample that programming. Comcast-NBCU NPRM Comments at 40; Content Companies NPRM Comments at 4; NAB NPRM Comments at 2-3; National Association of Broadcasting Reply Comments, MB Docket No. 16-41, at 3 (rec. Feb. 22, 2017) (NAB NPRM Reply).

⁶¹ *Termination of Certain Proceedings as Dormant*, 35 FCC Rcd at 10498.

independent programming and the availability of such programming to consumers. For example, what is the current state of the marketplace? Are independent programmers still experiencing the same obstacles to carriage that the record described in response to our inquiries in 2016?⁶² Has the availability of carriage on a variety of platforms, including OVDs and MVPDs, increased or decreased in the intervening years? Specifically, we seek information on how many independent programmers currently are carried exclusively by MVPDs, how many are carried exclusively by OVDs, and how many are carried by both MVPDs and OVDs. Has the number of independent programmers carried on each of these platforms increased or decreased since 2017? If it has decreased, what factor or factors have led to such decrease? Is there more or less independent and diverse programming available to consumers today than there was in 2017? Have changes in the marketplace exacerbated the difficulty of independent programmers in obtaining carriage? We note that in the *2022 Communications Marketplace Report*, NTCA asserts that a number of MVPDs have discontinued offering video service to its customers, and Rural Media Group contends that the vertical integration of MVPDs has restricted access to independent cable networks.⁶³ Does the continued decrease in MVPD subscribers have any effect on the ability of independent programmers to obtain carriage?⁶⁴

17. In addition, we seek comment on whether it is more difficult for independent programmers to obtain carriage on certain types of MVPDs (e.g., cable vs. non-cable MVPDs, or smaller vs. larger MVPDs). How does the level of competition among MVPDs impact the bargaining leverage of independent programmers in negotiations for carriage deals? To what extent does the ability of independent programmers to grow and thrive today depend on their ability to secure carriage on MVPDs? For each of these questions, we request that commenters support their responses with relevant information regarding specific independent program networks. We also seek comment on what, if any, difficulties independent programmers have experienced in gaining carriage on OVDs.

B. Marketplace Obstacles Faced by Independent Programmers

1. Most Favored Nation Provisions

18. As discussed above, MFN provisions generally authorize a contracting video programming distributor to modify a programming agreement to incorporate more favorable rates, contract terms, or conditions that the contracting programmer later agrees to with another distributor.⁶⁵ We seek comment on the current usage of MFN provisions, both conditional and unconditional,⁶⁶ in contracts for carriage of non-broadcast video programming. Has there been a notable change in the prevalence of MFNs provisions, particularly unconditional MFNs, since 2017? If unconditional MFN provisions are used less frequently today, what accounts for this change and is the downward trend in the use of such provisions expected to continue? Conversely, if unconditional MFN provisions are used more frequently today, what accounts for this change and is the upward trend in the use of such provisions expected to continue? Are conditional and unconditional MFN provisions typically only included in carriage agreements between independent programmers and MVPDs or are they also included in agreements with OVDs? Do both cable and non-cable MVPDs require MFN provisions? Are MFN provisions in general, and unconditional MFNs in particular, more likely to be included in carriage contracts with independent programmers than in carriage contracts with vertically integrated programmers? Do certain types of MFN provisions restrain the ability of independent programmers to compete fairly and, if so, what types and how? To what extent does the size of the MVPD or the number

⁶² See *supra* note 13.

⁶³ *2022 Communications Marketplace Report*, FCC 22-103, para. 413, 416.

⁶⁴ *Id.* at para 218 (noting MVPD subscribership has been declining since 2013, and that 51.3% of U.S. households subscribed to a traditional MVPD as of the end of 2021).

⁶⁵ *AT&T-DIRECTV Order*, 30 FCC Rcd at 9218-19, para. 228 & n.655. See *supra* para. 4.

⁶⁶ See *supra* note 8 (defining “conditional” and “unconditional” MFN provisions).

of channels offered by an independent programmer impact whether MFN provisions are included in carriage contracts? Do MFN provisions in carriage agreements between MVPDs and independent programmers cover the terms of both other MVPD agreements and OVD agreements? If so, how often do such MFN provisions extend to OVD agreements?

19. Additionally, we seek comment on the current costs and benefits of both conditional and unconditional MFN provisions. What impact do conditional and unconditional MFNs have on the development and distribution of diverse and niche programming today? To what extent do MFN provisions limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or online distributors? Are there particular types of conditional MFN provisions that hinder the development and distribution of such programming and, if so, how do they have this effect? What impact do audits and other mechanisms used to enforce MFN provisions have on independent programmers' ability to compete in the marketplace? What benefits are associated with conditional and unconditional MFN provisions? Are there specific types of MFN provisions that are pro-competitive and enhance independent programmers' ability to gain MVPD carriage, making more diverse programming offerings available for consumers? How do MFN provisions ultimately affect consumers? What, if any, consideration, economic or non-economic, do independent programmers receive from MVPDs in exchange for agreeing to MFN provisions? To what extent do the benefits of MFN provisions, either conditional or unconditional, outweigh any harmful effects of such provisions?

20. We propose to adopt a rule prohibiting the inclusion of MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. As discussed above, we propose to define "independent programmer" for purposes of this proceeding as "a non-broadcast programmer that (1) is not vertically integrated with an MVPD and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses."⁶⁷ For purposes of this rule, we propose to define "most favored nation provision" as "a provision that entitles a multichannel video programming distributor to contractual rights or benefits that an independent video programming vendor has offered or granted to another multichannel video programming distributor or online video distributor, either conditionally or unconditionally." For purposes of this rule, we also propose to define the terms (i) "conditionally" as "subject to the multichannel video programming distributor's acceptance of terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other video programming distributor's agreement, and with which the multichannel video programming distributor can reasonably comply technologically and legally," and (ii) "unconditionally" as "without obligating the multichannel video programming distributor to accept any such terms and conditions." We seek comment on this proposal and the proposed definitions of "most favored nation provision," "conditionally," and "unconditionally." In particular, we seek comment on how the proposed prohibition would enhance the ability of independent programmers to obtain MVPD carriage and compete in the marketplace. We also seek comment on whether the proposed prohibition would benefit consumers by, for example, facilitating the development and distribution of more diverse and niche programming. Would the proposed prohibition result in other benefits to consumers? Are there particular types of MFN provisions that should be excluded or exempted from the proposed prohibition because they provide procompetitive benefits that outweigh any harmful effects? What are the costs and benefits of the proposed prohibition to MVPDs, particularly small entities?

⁶⁷ See *supra* note 3. Because the concerns that have been raised regarding the harmful effects of MFN provisions on independent programmers have not been raised with respect to MVPD-affiliated networks, we are not proposing to apply the proposed ban on MFN provisions to carriage agreements between an MVPD and the affiliated network of another MVPD. Similarly, because such concerns have not been raised with respect to programmers affiliated with a broadcast network or entity that holds broadcast station licenses, we are not proposing to apply the proposed ban on MFN provisions to carriage agreements between an MVPD and such programmers. We seek comment on this approach.

21. We seek comment on whether we should preclude MVPDs on a going forward basis from enforcing all MFN provisions in existing contracts. If so, should we afford parties some period of time to reform their existing contracts before the prohibition takes effect? How much time would be reasonable? Commenters should explain the rationale for any time period proposed. We propose that complaints alleging violations of the prohibition on MFN provisions would be addressed under the program carriage complaint procedures.⁶⁸ We seek comment on any amendments to the program carriage complaint procedures that would be necessitated by adoption of proposed prohibition on MFN provisions. What remedies and penalties should be imposed on an MVPD that violates the proposed prohibition on MFN provisions? To what extent, if any, would costs or other concerns associated with pursuing a program carriage complaint affect the ability of independent programmers to obtain relief if an MVPD violates the proposed prohibition?

C. Alternative Distribution Method Provisions

22. As described above, ADM provisions generally bar or restrict a video programming vendor from exhibiting its programming on alternative video distribution platforms (such as online platforms), often for a specified window of time following the programming's original linear airing, or until certain conditions are met.⁶⁹ We seek comment on the prevalence and scope of ADM provisions in contracts for carriage of non-broadcast video programming today. Has there been any change in the usage or scope of ADMs since 2017? If ADM provisions are less common today, what accounts for this change and is the downward trend in usage of these provisions expected to continue? If ADM provisions are used more frequently today, what accounts for this change and is the upward trend in such usage expected to continue? Are ADM provisions today generally included only in carriage agreements between independent programmers and MVPDs or are they also included in carriage agreements between independent programmers and OVDs? Do both cable and non-cable MVPDs require such provisions? Are ADM provisions more likely to be included in carriage contracts with independent programmers than in carriage contracts with vertically integrated programmers? Do certain types of ADM provisions restrain independent programmers from competing fairly? If so, what types of ADM provisions have this effect and how do such provision restrain independent programmers from competing fairly? Is there currently an industry standard for the windowing restrictions included in ADM provisions (i.e., is there a particular window of time that is typically required in agreements today)? Are certain windowing restrictions more harmful to independent programmers' ability to compete than other windowing restrictions, and if so, why, and how common are such restrictions?

23. We also seek comment on the current costs and benefits of ADM provisions. What effect do ADM provisions have on the video marketplace and the availability of independent programming today? Do ADM provisions thwart competition, diversity, or innovation? If so, how? Parties should describe in detail. To what extent are ADM provisions used to limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or OVDs, and how does that impact their ability to compete? For example, are certain types of ADM provisions aimed more at restricting new means of distribution than at facilitating efficient negotiations or protecting an MVPD's investment in programming? What benefits are associated with ADM provisions? Do independent programmers receive any consideration, economic or non-economic, from MVPDs in exchange for agreeing to ADM provisions? Do certain types of ADM provisions enhance independent programmers' ability to gain MVPD carriage and thereby increase the exposure of their programming by incentivizing MVPDs to carry new content? How are ADM provisions enforced? Are there particular enforcement mechanisms for ADM provisions that are more common to independent programmers than other enforcement mechanisms? Do certain types of enforcement mechanisms for ADM provisions have a uniquely harmful impact on independent programmers' ability to compete?

⁶⁸ See 47 CFR § 76.1302 (rules governing the conduct of program carriage complaint proceedings).

⁶⁹ 2016 *Independent Programming NOI*, 31 FCC Rcd at 1615, para. 10. See *supra* para. 4.

24. We propose to prohibit the inclusion of “unreasonable” ADM provisions in carriage agreements between MVPDs and independent programmers.⁷⁰ We further propose to define “alternative distribution method provision” to mean “a provision that prohibits or restricts a video programming vendor from exhibiting its programming on alternative, non-traditional video distribution platforms (such as OVDs) for a specified period of time following the programming’s original linear airing,⁷¹ or until certain conditions are met.” Under the proposed prohibition on “unreasonable” ADM provisions, the issue of whether a particular ADM clause is “unreasonable” would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act.⁷² In determining whether a particular ADM provision is “unreasonable,” we propose to consider, among other factors, the extent to which an ADM provision prohibits an independent programmer from licensing content to other alternative, non-traditional distributors, including OVDs. By prohibiting only those ADM provisions determined to be “unreasonable,” this proposal would recognize that some ADM provisions may serve the public interest by incentivizing MVPDs to invest in new or emerging programming sources, including independent or niche content, while other ADM provisions may have no pro-competitive justifications and hinder the provision of diverse programming to consumers.

25. We seek comment on the proposed prohibition on unreasonable ADM provisions. We seek comment on whether the proposed prohibition would enhance the ability of independent programmers, particularly small entities, to compete fairly in the marketplace for video programming. Alternatively, would prohibiting certain ADM provisions make it less likely that MVPDs would agree to carry independent programmers or incentivize MVPDs to seek exclusive programming arrangements with independent programmers (subject to the restrictions in 47 U.S.C. § 536(a)(2)) that would limit rather than expand their carriage opportunities? Additionally, we seek comment on how the proposed prohibition would affect consumers. Would it be expected to result in a greater choice of programming sources or lower costs for consumers? How would the proposed prohibition on unreasonable ADM provisions likely affect MVPDs, including small MVPDs? What costs and benefits are associated with the proposed prohibition for each of the affected parties? Should we provide additional guidance in this proceeding on what constitutes an “unreasonable” ADM provision or should we make such determinations on a case-by-case basis in the context of program carriage complaint proceedings as proposed above? In this regard, we seek comment on what factors should be considered in determining whether an ADM provision is “unreasonable.” Are there specific ADM provisions that should be deemed presumptively “unreasonable”? Conversely, are there certain ADM provisions that should be considered to be presumptively reasonable?

26. We seek comment on whether we should preclude MVPDs on a going forward basis from enforcing existing contracts that contain unreasonable ADM provisions and, if so, whether we should

⁷⁰ As discussed above, we propose to define “independent programmer” for purposes of this proceeding as “a non-broadcast programmer that (1) is not vertically integrated with an MVPD and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses.” See *supra* note 3. Because the concerns that have been raised regarding the harmful effects of unreasonable ADM provisions on independent programmers have not been raised with respect to MVPD-affiliated networks, we are not proposing to apply the proposed ban on unreasonable ADM provisions to carriage agreements between an MVPD and the affiliated network of another MVPD. Similarly, because such concerns have not been raised with respect to programmers affiliated with a broadcast network or entity that holds broadcast station licenses, we are not proposing to apply the proposed ban on unreasonable ADM provisions to carriage agreements between an MVPD and such programmers. We seek comment on this approach.

⁷¹ As explained above, “linear programming” is generally understood to refer to video programming that is prescheduled by the programmer. *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 16001 n.26 (2014). The programming’s “original linear airing” refers to the initial prescheduled airing of the programming by the programmer.

⁷² 47 U.S.C. § 536(a)(4) (requiring the Commission to prescribe procedures for the expedited review of program carriage complaints); 47 CFR § 76.1302 (rules governing the conduct of program carriage complaint proceedings).

afford the parties a specified period of time to revise their contracts to replace any unreasonable ADM provision with an ADM provision with reasonable terms before the prohibition takes effect. We also seek input on what, if any, amendments to the program carriage complaint procedures would be warranted if the proposed prohibition on unreasonable ADM provisions is adopted. In addition, we seek comment on what remedies and penalties should be imposed on an MVPD that violates the proposed prohibition on unreasonable ADM provisions. In such circumstances, would it be appropriate for the Media Bureau to simply order that an unreasonable ADM provision not be enforced or be replaced with an ADM provision with reasonable terms? Moreover, we seek comment on the extent to which costs or other concerns associated with pursuing a program carriage complaint would affect the ability of independent programmers to obtain relief if an MVPD violates the proposed ban on unreasonable ADM provisions.

1. Program Bundling

27. We seek comment on what the current program bundling practices are today and how such practices affect the ability of MVPDs to carry independent and diverse programming and competition in the video distribution market.⁷³ For example, is forced bundling prevalent today? What impact, if any, does the carriage of bundled channels have on the ability of MVPDs to carry independent channels? Are there examples of independent programmers being dropped or not carried at all due to the constraints placed on MVPD systems by bundling since 2017? To what extent does bundling have a greater impact on smaller MVPDs than it does on large MVPDs? How much has MVPD channel capacity (i.e., the number of MVPD channels available for programming) increased or decreased among both large and smaller MVPDs since 2017? To the extent there have been increases, will this alleviate the constraints placed on MVPD systems by bundling? Are there any plans for large and small MVPDs to increase capacity in the future? Alternatively, is MVPD capacity increasingly being used for broadband today, and does this consequently leave fewer additional channels available for independent programming? Are there other factors, such as financial resources, that continue to constrain the ability of MVPDs to carry independent programming as a result of bundling notwithstanding increases in channel capacity? How does bundling affect consumer choice? Does bundling raise or lower costs for consumers? What are the costs and benefits associated with program bundling? Commenters should describe the extent to which bundling may impede the ability of MVPDs to carry independent programming and whether this is outweighed by any associated benefits of this practice.

2. Other Marketplace Obstacles

28. We seek comment on other practices that may impede entry into the market by or growth of independent programmers, thereby harming competition and/or consumer choice. For example, what impact do tier placement and penetration requirements (i.e., requirements in some programming agreements that programming be placed on a particular tier or that specify a minimum percentage of

⁷³ See *2016 Independent Programming NOI*, 31 FCC Rcd at 1616-17, para. 15 (describing bundling as a practice in which large media entities with multiple program offerings, including vertically-integrated programmers, leverage their marquee programming, such as premium channels or regional sports programming, to force MVPDs to carry additional channels that have little or no consumer demand). See also *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of Circumstances Test*, MB Docket No. 15-216, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10339, para. 15 (2015) (describing bundling in the context of retransmission consent). We note that in other contexts, parties have claimed that harm to independent (non-broadcast) programmers from bundling may occur from retransmission consent negotiations when a television station demands carriage of affiliated networks and multicast streams because of the capacity consumed on MVPD facilities. See, e.g., Letter from the American Television Alliance to The Honorable Frank Pallone, Jr., Chairman, Committee on Energy and Commerce, U.S. House of Representatives, at 4 (June 3, 2019), <https://congress.gov/116/meeting/house/109584/documents/HHRG-116-IF16-20190604-SD006.pdf>; *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-216, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10339, para. 15 & n.67 (2015). Thus, while the focus of this NPRM is on non-broadcast programming, issues involving bundling extends beyond non-broadcast programming.

subscribers who must receive the programming) have on independent programmers? Are such requirements more typically found in programming agreements with independent programmers than in agreements with vertically-integrated programmers? Are there negotiation practices that hinder independent programmers' entry into the market? If so, what are these practices and how do they impede independent programmers' entry into the market? Do independent programmers that reject certain provisions or requirements in programming agreements face retaliatory conduct that impacts their ability to compete fairly? Are there other marketplace practices that limit the ability of independent programmers to reach consumers? What are the costs of such practices? In particular, do such practices have an adverse effect on diversity, competition, or innovation? What, if any, benefits do such practices offer and do the benefits outweigh the harms?

D. Legal Authority to Address Marketplace Obstacles to Independent Programming

29. We seek comment on the Commission's legal authority to take action to curb practices that may adversely impact the ability of independent programmers to compete fairly. In particular, we seek comment on the Commission's authority under section 616 of the Act⁷⁴ to adopt rules prohibiting the use of MFN provisions and unreasonable ADM provisions in program carriage agreements between MVPDs and independent programmers, as proposed above. Section 616(a) directs the Commission to "establish regulations governing program carriage agreements and related practices between cable operators or other [MVPDs] and video programming vendors."⁷⁵ We seek comment on whether the Commission's grant of authority under section 616(a) to adopt rules "governing program carriage agreements and related practices between [MVPDs] and video programming vendors" is sufficiently broad to permit us to ban the use of MFN or unreasonable ADM provisions. We note that the prohibitions on MFN provisions and unreasonable ADM provisions proposed above would apply to agreements between MVPDs and independent programmers, which are encompassed within the term "video programming vendors."⁷⁶ Congress's goal in enacting section 616 was "to stem and reduce the potential for abusive or anticompetitive actions [by MVPDs] against programming entities."⁷⁷ Consistent with this objective, the proposed prohibitions on MFN provisions and unreasonable ADM provisions discussed above are intended to enhance competition in the video marketplace and reflect Congress's belief that "competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power" and other MVPDs.⁷⁸

30. Moreover, we tentatively conclude that Congress did not intend to limit the Commission's authority under section 616(a) to the specific practices listed in that section. The introductory language in section 616(a) grants the Commission broad authority to "establish regulations governing program carriage agreements and related practices between cable operators and multichannel video programming distributors and video programming vendors," and nothing in the statute expressly precludes the Commission from establishing rules apart from those specifically listed.⁷⁹ Further, sections 616(a)(1)-(a)(3)—the subsections relating to substantive requirements—are introduced by the verbs

⁷⁴ 47 U.S.C. § 536.

⁷⁵ *Id.* § 536(a).

⁷⁶ *Id.* § 536(b) (defining "video programming vendor" to mean "a person engaged in the production, creation, or wholesale distribution of video programming for sale"). The term "video programming," in turn, means "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." *Id.* § 522(20).

⁷⁷ H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 27 (1992) (House Report). Congress expressed concern that MVPDs may be able "to extract concessions from programmers" which "could discourage entry of new programming services, restrict competition, impact adversely on diversity, and have other undesirable effects on program quality and viewer satisfaction." *Id.* at 42-43.

⁷⁸ *Id.* at 43.

⁷⁹ 47 U.S.C. § 536.

“include” or “contain,” which suggests that such requirements are not exhaustive.⁸⁰ In instances where Congress intends to limit the Commission’s rulemaking authority to specified areas, it has done so expressly.⁸¹ We seek comment on this analysis.

31. We also seek comment on whether section 616(a)(3) provides a basis for our proposed bans on MFN provisions and unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. Section 616(a)(3) directs the Commission to adopt rules “designed to prevent [an MVPD] from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”⁸² We seek comment on whether this provision authorizes the Commission to adopt rules that prohibit vertically integrated MVPDs from including MFN and unreasonable ADM clauses in carriage agreements with independent programmers, where such MVPDs do not include the same clauses in carriage agreements with affiliated programming networks. If so, would the application of such rules only to vertically integrated MVPDs adequately address the competition and diversity concerns raised by restrictive MFN and ADM clauses? Would such rules be effective given that an MVPD could enter into the same restrictive MFN and/or ADM clauses with both an affiliated programming network and an independent programmer but simply not exercise its rights with respect to the affiliated network?

32. We further seek comment on whether section 628 provides legal authority for adoption of our proposed rules. Similar to our proposed rules, the purpose of section 628 is to “increase[e] competition and diversity in the [[MVPD] market ... and to spur the development of communications technologies.”⁸³ Section 628(b) precludes a cable operator, a common carrier or its affiliate that provides video programming, and an Open Video System (OVS) operator, as well as a satellite-delivered programmer affiliated with one of those entities, from engaging in “unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any” MVPD from providing programming to subscribers or consumers.⁸⁴ Section 628(c)(1) directs the Commission to “prescribe regulations to specify particular conduct that is prohibited by [section 628(b)]” in order to “increase[e] competition and diversity in the [MVPD] market and the continuing development of communications technologies.”⁸⁵ Considering that section 628(b) appears to target only methods, acts, and practices that adversely affect MVPDs, we seek comment on whether the Commission could lawfully invoke this provision to proscribe, as an “unfair” method, act or practice, the use of certain MFN and ADM provisions in agreements between MVPDs and independent programmers. Given that direct broadcast satellite (DBS) carriers are not subject to the provisions of section 628,⁸⁶ we seek comment on whether reliance on that provision to limit the use of MFN and ADM provisions would result in a disparity in regulatory treatment among MVPDs.

33. Finally, we seek comment on whether there are other provisions in the Act that afford the Commission the authority to alleviate marketplace obstacles to the distribution of independent and diverse

⁸⁰ *Id.* § 536(a)(1)-(3).

⁸¹ *See, e.g., id.* §§ 613(f)(1), (2) (directing the Commission to reinstate its video description regulations adopted in *Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230 (2000), recon. granted in part and denied in part, 16 FCC Rcd 1251 (2001,) and to modify those rules “only as follows”).

⁸² 47 U.S.C. § 536(a)(3).

⁸³ *Id.* § 548(a).

⁸⁴ *Id.* §§ 548(b), 548(g), 573(c)(1)(A).

⁸⁵ *Id.* § 548(c)(1).

⁸⁶ *AT&T-DIRECTV Order*, 30 FCC Rcd at 9194-95, para. 169 (noting that DBS providers are not currently subject to the program access provisions in section 628 of the Act).

programming, including obstacles posed by MFN provisions and unreasonable ADM provisions. For example, section 335(a) provides the Commission with authority to “impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming.”⁸⁷ Do we have authority under other provisions of Title III?⁸⁸ We also seek comment on whether we have—and should exercise—ancillary authority under section 4(i) of the Act to address MFN and ADM provisions.⁸⁹

34. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,⁹⁰ 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 considerations⁹¹ and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how any Commission actions taken to address barriers to the distribution of independent and diverse programming may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

IV. PROCEDURAL MATTERS

35. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹² 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

⁸⁷ 47 U.S.C. § 335(a).

⁸⁸ See *Targeting and Eliminating Unlawful Text Messages*, Report and Order and Further Notice of Proposed Rulemaking, 2023 WL 2582658, para. 40 (2023) (noting the Commission’s authority under Sections 303(b), 307, and 316).

⁸⁹ 47 U.S.C. § 154(i).

⁹⁰ 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.

⁹¹ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁹² 47 CFR §§ 1.1200 *et seq.*

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

36. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁹³

37. *Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁹⁴ 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."⁹⁵ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B.

38. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. *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.

⁹³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁹⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601, *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁹⁵ *Id.* § 605(b).

40. *Providing Accountability Through Transparency Act*: Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.⁹⁶

41. *Additional Information*. For additional information on this proceeding, please contact Kathy Berthot of the Media Bureau's Policy Division at Kathy.Berthot@fcc.gov or (202) 418-7454.

V. ORDERING CLAUSES

42. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303, 307, 316, 335, 616 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303, 307, 316, 335, 536 and 548, this Notice of Proposed Rulemaking **IS ADOPTED**.

43. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking in MB Docket No. 24-115 on or before thirty (30) days after publication in the Federal Register and reply comments on or before sixty (60) days after publication in the Federal Register.

44. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

APPENDIX A

Proposed Rules

For the reasons discussed herein, the Federal Communications Commission proposes to amend Part 76 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.1300 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding new paragraph (b), redesignating paragraphs (d) and (e) as paragraphs (g) and (h) and adding new paragraphs (e) and (f) to read as follows:

§ 76.1300 Definitions.

* * * * *

(b) *Alternative distribution method provision.* The term “alternative distribution method provision” means a provision that prohibits or restricts an independent video programming vendor from exhibiting its programming on alternative, non-traditional video distribution platforms (such as online video distributors) for a specified period of time following the programming’s original linear airing, or until certain conditions are met. For purposes of this section, the term “original linear airing” refers to the initial prescheduled airing of the programming by the programmer.

* * * * *

(e) *Independent video programming vendor.* The term “independent video programming vendor” means “a non-broadcast programmer that (1) is not vertically integrated with a multichannel video programming distributor and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses.”

(f) *Most favored nation provision.* The term “most favored nation provision” means “a provision that entitles a multichannel video programming distributor to contractual rights or benefits that an independent video programming vendor has offered or granted to another multichannel video programming distributor or online video distributor, either conditionally or unconditionally. The term “conditionally” means “subject to the multichannel video programming distributor’s acceptance of terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other multichannel video programming distributor’s or online video distributor’s agreement.” The term “unconditionally” means “without obligating the multichannel video programming distributor to accept any such terms or conditions.”

* * * * *

3. Amend § 76.1301 by adding paragraphs (d) and (e) to read as follows:

§ 76.1301 Prohibited Practices.

* * * * *

(d) *Most favored nation provisions.* No multichannel video programming distributor shall enter into an agreement with an independent video programming vendor that contains a most favored nation provision.

(e) *Unreasonable alternative distribution method provisions.* No multichannel video programming distributor shall enter into an agreement with an independent video programming vendor that contains an unreasonable alternative distribution method provision.

APPENDIX B

Initial Regulatory Flexibility Act 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 of the policies and rule changes proposed in the *Notice of Proposed Rulemaking (NPRM)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. One of the Commission's primary objectives with respect to multichannel video programming is to foster a diverse, robust, and competitive marketplace for the delivery of such programming.⁴ We recognize that competition among distributors of video programming continues to evolve and consumers today have a wealth of video programming platforms from which to choose. Nevertheless, stakeholders continue to raise concerns that certain marketplace practices by distributors may hinder independent video programmers⁵ from reaching consumers and deprive them of access to their choice of diverse programming—one of the benefits of enhanced competition in the video marketplace. Specifically, independent programmers contend that their ability to thrive in the marketplace and reach consumers today depends on their ability to negotiate and secure carriage on multichannel video programming distributors (MVPDs) or online video distributors (OVDs). Despite the changes in the way that consumers access video programming—including via the growing number 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 5 U.S.C. § 603(a).

³ *Id.*

⁴ See, e.g., 47 U.S.C. § 521 (“The purposes of this subchapter are to . . . (4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.”); 47 U.S.C. § 532(a) (“The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.”); 47 U.S.C. § 533(f)(2) (“[T]he Commission shall, among other public interest objectives (A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer; (B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors; . . . (G) not impose limitations which would impair the development of diverse and high quality video programming.”). See 47 U.S.C. § 521(a)(4), (b)(1)-(5) (finding that the cable industry was highly concentrated and vertically-integrated and that “there is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media”); see also H.R. No. 102-862, at 2, 1992 U.S.C.C.A.N. 1231, 1232.

⁵ For purposes of this Notice of Proposed Rulemaking, we propose to define an “independent video programmer” or “independent programmer” as a non-broadcast programmer that (1) is not vertically integrated with an MVPD and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses. We also propose to use the definition of “affiliated” set forth in section 76.1300(a) of the Commission’s rules for purposes of this definition. 47 CFR 76.1300(a) (providing that “entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities”).

platforms available to video consumers and the protracted decline in MVPD subscribers⁶—independent video programmers have consistently asserted over the past several years that certain practices by incumbent cable operators and other MVPDs, particularly most favored nation (MFN)⁷ and alternative distribution method (ADM) clauses⁸ in program carriage agreements, have impeded their ability to reach consumers across all video platforms, leading to less competition and fewer choices for those who watch.⁹

3. The *NPRM* seeks comment on the state of the marketplace for independent and diverse programming and the availability of such programming to consumers today. The *NPRM* also seeks comment on the obstacles faced by independent programmers in reaching consumers and the actions the Commission can take to alleviate such obstacles. Specifically, the *NPRM* seeks comment on the current usage of MFN provisions, both conditional and unconditional, in contracts for carriage of non-broadcast video programming and on the costs and benefits of conditional and unconditional MFN provisions. Additionally, the *NPRM* requests comment on the prevalence and scope of ADM provisions in contracts for carriage of non-broadcast video programming today and on the current costs and benefits of ADM provisions. The *NPRM* seeks comment on what the current program bundling practices are today and how such practices affect the ability of MVPDs to carry independent and diverse programming. Further, the *NPRM* seeks comment on other practices that may impede entry into the market by or growth of independent programmers. Finally, the *NPRM* invites comment on the need for Commission action to

⁶ *Communications Marketplace Report*, GN Docket No. 22-203, FCC 22-103, paras. 218-221 (Dec. 30, 2022) (2022 *Communications Marketplace Report*) (noting that MVPD subscribership has been declining since 2013, including a loss of 6.7 million video subscribers between the end of 2020 and 2021).

⁷ In general, an MFN provision entitles an MVPD to more favorable economic or non-economic contract terms that a video programming vendor has provided to another video programming distributor, whether an MVPD or an OVD. *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, 9218-19, para. 228 & n.655 (2015). MFN rights can be conditional or unconditional. A conditional MFN provision entitles an MVPD to certain contractual rights that the video programming vendor has offered or granted to another video programming distributor, subject to the MVPD's acceptance of related terms and conditions contained in that other distributor's agreement. An unconditional MFN provision does not require that the MVPD accept any related terms and conditions in order to be entitled to receive the contractual rights and benefits granted to the other video programming distributor. *Id.* at 9219 n.655.

⁸ An ADM provision generally prohibits or restricts a video programming vendor from exhibiting its programming on OVD platforms, often for a specified period of time (sometimes referred to as a "holdback period" or "window") following the programming's original linear airing, or until certain conditions are met. *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Inquiry, 31 FCC Rcd 1610, 1615, para. 10 (2016).

⁹ See, e.g., AMC Networks, Inc. Comments, MB Docket No. 20-70, at 2-3 (rec. May 18, 2020) (asserting that independent programmers routinely encounter demands from vertically integrated MVPDs that put them at a disadvantage to the MVPD's affiliated networks, including demands for most favored nation clauses, prohibitions on direct-to-consumer or a la carte offerings, subscription video-on-demand holdbacks, and rights of conversation and offer provisions that require the programmers to approach an MVPD and engage in a conversation with them before the programmer is permitted to conclude a deal with an online video distributor for new content licenses or content development); beIN Sports, LLC Reply Comments, MB Docket No. 20-70, at 5-6 (rec. June 1, 2020) (asserting that "[v]ertically integrated MVPDs use [most favored nation provisions] as levers to prevent independent programmers from obtaining the favorable rates and conditions of carriage from smaller MVPDs that they could otherwise obtain"); Ride Television Network, Newsmax TV, HDNet, LLC, KSE Outdoor Sportsman Group, WeatherNation TV Comments, MB Docket No. 20-70, at 2 (rec. May 18, 2020) (asserting that "[i]ndependent programmers are forced to agree to onerous most favored nation clauses which impede their ability to negotiate on a balanced playing field"). See also *Communications Marketplace Report*, GN Docket No. 20-60, FCC 20-188, para. 347 (Dec. 31, 2020) (asserting that "vertically integrated MVPDs impose onerous contract terms on programmers, including most favored nations requirements and restrictions on alternative means of content distribution that stifle innovation and reduce diversity and competition").

address any obstacles to the distribution of independent and diverse programming, as well as the Commission's legal authority to take action to curb program carriage practices that may adversely impact the ability of independent programmers to compete fairly.

4. In order to alleviate marketplace obstacles that may hinder independent programmers from reaching consumers, the *NPRM* proposes to prohibit the use of MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. In addition, the *NPRM* proposes to bar unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. The *NPRM* proposes that the issue of whether a particular ADM clause is "unreasonable" would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act,¹⁰ taking into account, among other factors, the extent to which an ADM provision prohibits an independent programmer from licensing content to other distributors, including OVDs. The *NPRM* also seeks comment on whether further guidance should be provided on the meaning of "unreasonable" in this context.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), , 303, 307, 316,, 335, 616 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303, 307, 316, 335, 536, and 548.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).¹³ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁴

7. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"¹⁵ transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹⁶ Wireless cable operators that use spectrum in the BRS

¹⁰ 47 U.S.C. § 536(a)(4) (requiring the Commission to prescribe procedures for the expedited review of program carriage complaints); 47 CFR § 76.1302 (rules governing the conduct of program carriage complaint proceedings).

¹¹ 5 U.S.C. § 603(b)(3).

¹² See *id.* § 601(6).

¹³ See *id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁴ 15 U.S.C. § 632.

¹⁵ The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

¹⁶ See 47 CFR § 27.4; see also *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and*

(continued....)

often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.¹⁷

8. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).¹⁸ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁰ Of this number, 2,837 firms employed fewer than 250 employees.²¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

9. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.²² The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.²³ Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.²⁴ One of the winning bidders claiming a small business status classification in the BRS license auction has

(Continued from previous page)

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹⁷ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

¹⁸ 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>.

¹⁹ See 13 CFR § 121.201, NAICS Code 517312.

²⁰ 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>.

²¹ *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.

²² Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²³ See 47 CFR § 27.1218(a).

²⁴ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

an active licenses as of December 2021.²⁵

10. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years.²⁶ In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

11. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.²⁷ 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.²⁸ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.²⁹ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.³⁰ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.³¹ 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.³² Based on this data, the Commission estimates that a majority of firms in this industry are small.

²⁵ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁶ See 47 CFR § 27.1219(a).

²⁷ 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>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in 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.

12. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.³³ Based on industry data, there are about 420 cable companies in the U.S.³⁴ Of these, only seven have more than 400,000 subscribers.³⁵ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.³⁶ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.³⁷ Of these, about 639 have more than 15,000 subscribers.³⁸ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

13. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."³⁹ 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.⁴⁰ Based on industry data, only six cable system operators have more than 498,000 subscribers.⁴¹ 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.⁴² Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

14. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴³

³³ 47 CFR § 76.901(d).

³⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

³⁵ 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).

³⁶ 47 CFR § 76.901(c).

³⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

³⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

³⁹ 47 U.S.C. § 543(m)(2).

⁴⁰ *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).

⁴¹ 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 (Apr. 2022).

⁴² 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).

⁴³ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP (continued....)

Wired Telecommunications Carriers⁴⁴ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.⁴⁸ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.⁵⁰ Transmission facilities may be based on a single technology or combination of technologies.⁵¹ 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.⁵² By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵³

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁴ U.S. Census Bureau data for 2017 show that 3,054

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Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁹ *Id.*

⁵⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵¹ *Id.*

⁵² See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

⁵³ *Id.*

⁵⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

firms operated in this industry for the entire year.⁵⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁶ Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.⁵⁷ DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

17. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁵⁸ private-operational fixed,⁵⁹ and broadcast auxiliary radio services.⁶⁰ They also include the Upper Microwave Flexible Use Service (UMFUS),⁶¹ Millimeter Wave Service (70/80/90 GHz),⁶² Local Multipoint Distribution Service (LMDS),⁶³ the Digital Electronic Message Service (DEMS),⁶⁴ 24 GHz Service,⁶⁵ Multiple Address Systems (MAS),⁶⁶ and Multichannel Video Distribution and Data Service (MVDDS),⁶⁷ where in some bands licensees can choose between common carrier and non-common carrier status.⁶⁸ Wireless Telecommunications Carriers (*except* Satellite)⁶⁹ 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.⁷⁰ U.S. Census Bureau data for 2017

⁵⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

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 See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

⁵⁸ See 47 CFR Part 101, Subparts C and I.

⁵⁹ See *id.* Subparts C and H.

⁶⁰ 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.

⁶¹ See 47 CFR Part 30.

⁶² See 47 CFR Part 101, Subpart Q.

⁶³ See *id.* Subpart L.

⁶⁴ See *id.* Subpart G.

⁶⁵ See *id.*

⁶⁶ See *id.* Subpart O.

⁶⁷ See *id.* Subpart P.

⁶⁸ See 47 CFR §§ 101.533, 101.1017.

⁶⁹ 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>.

⁷⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

show that there were 2,893 firms that operated in this industry for the entire year.⁷¹ Of this number, 2,837 firms employed fewer than 250 employees.⁷² Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

18. 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.⁷³

19. 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.

20. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.⁷⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.⁷⁶ Of this total, 2,964 firms operated with fewer than 250 employees.⁷⁷ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

⁷¹ 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>.

⁷² *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.

⁷³ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

⁷⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁶ 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>.

⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

21. *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 Carriers⁷⁸ is the closest industry with an SBA small business size standard.⁷⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁸³ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁸⁴ 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.

22. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).⁸⁵ The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast.⁸⁶ They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively.⁸⁷ Establishments known as web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.⁸⁸ The SBA small business size standard for this industry classifies firms having 1,000 or fewer employees as small.⁸⁹ U.S. Census Bureau data for 2017 show that there were firms that 5,117 operated for the entire year.⁹⁰ Of this total,

⁷⁸ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸⁰ *Id.*

⁸¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁸² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁴ *Id.*

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition, "519130 Internet Publishing and Broadcasting and Web Search Portals,"* <https://www.census.gov/naics/?input=519130&year=2017&details=519130>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See 13 CFR § 121.201, NAICS Code 519130 (as of 10/1/22, NAICS Codes 516210 and 519290).

⁹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 519130, <https://data.census.gov/cedsci/table?y=2017&n=519130&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

5,002 firms operated with fewer than 250 employees.⁹¹ Thus, under this size standard the majority of firms in this industry can be considered small.

23. *Open Video Systems.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is “Wired Telecommunications Carriers.”⁹² The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁹³ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁹⁴ Of this total, 2,964 firms operated with fewer than 250 employees.⁹⁵ Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

24. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers’ industry which includes wireline telecommunications businesses.⁹⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁹⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁹⁸ Of this total, 2,964 firms operated with fewer than 250 employees.⁹⁹ Thus under the SBA size standard, the majority of firms in this industry can be considered small.

⁹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹² See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁹³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁹⁴ 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>.

⁹⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁹⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁹⁸ 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>.

⁹⁹ *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.

25. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁰⁰ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁰¹ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.¹⁰² 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹⁰³ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁰⁴ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

26. As of September 30, 2023, there were 1,377 licensed commercial television stations.¹⁰⁵ Of this total, 1,258 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations.¹⁰⁶ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA’s large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

27. *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.¹⁰⁷ 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

¹⁰⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁰¹ *Id.*

¹⁰² See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

¹⁰³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁰⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰⁵ *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (rel. Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

services.¹⁰⁸ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹⁰⁹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.¹¹⁰

28. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹¹¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹¹² Of this number, 2,964 firms operated with fewer than 250 employees.¹¹³ 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.¹¹⁴ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.¹¹⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The rule changes proposed in the NPRM, if adopted, will impose compliance obligations on small, as well as other entities. Specifically, the NPRM proposes to prohibit MFN provisions, either conditional or unconditional, in carriage agreements between MVPDs and independent programmers. The NPRM also proposes to prohibit unreasonable ADM provisions in carriage agreements between MVPDs and independent programmers. The NPRM proposes that a determination of whether a particular ADM provision is "unreasonable" would be fact-specific and decided in the context of a program carriage complaint proceeding brought under section 616 of the Act.¹¹⁶

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance,

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 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.

¹¹¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹¹² 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>.

¹¹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁴ 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>.

¹¹⁵ *Id.*

¹¹⁶ 47 U.S.C. § 536(a)(4) (requiring the Commission to prescribe procedures for the expedited review of program carriage complaints); 47 CFR § 76.1302 (rules governing the conduct of program carriage complaint proceedings).

rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”¹¹⁷

31. The proposals to prohibit MFN provisions and unreasonable ADM provisions, if adopted, would be expected to benefit small independent programmers by enhancing their ability to compete in the video marketplace and to create new, innovative program offerings. These proposals would also likely benefit small MVPDs and OVDs by removing barriers to mutually-beneficial carriage deals between these small entities and independent programmers. Nevertheless, the Commission seeks comment in the *NPRM* on how these proposals would affect small entities and expects to more fully consider the impact of these proposals and any alternatives on small entities, following review of the comments received in response to the *NPRM*.

32. The *NPRM* proposes to use the existing program carriage complaint procedures to address any complaints regarding violations of the proposed bans on MFN provisions and unreasonable ADM provisions. The *NPRM* seeks comment on whether costs or other concerns associated with pursuing a program carriage complaint would affect the ability of independent programmers, including small entities, to obtain relief if an MVPD violates the proposed ban on MFN provisions or unreasonable ADM provisions and asks whether any modifications to the program carriage complaint procedures are warranted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

33. None.

¹¹⁷ 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Amendment of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115, Notice of Proposed Rulemaking.

The marketplace for video programming continues to evolve and provide consumers with new ways to watch. But the laws that govern this marketplace from Congress have not changed. What also has not changed is that independent programmers continue to express concern about the challenges they have getting their programming on the channel line-up of cable and satellite television. That is why we are taking a fresh look at these enduring issues. I look forward to the record that develops on these competition matters.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Amendment of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115, Notice of Proposed Rulemaking.

I am open to the FCC taking a fresh look at the authority Congress delegated to the agency over carriage agreements between multichannel video programming distributors (MVPDs) and video programming vendors in Section 616 of the Communications Act in light of the modern media landscape. But today's Notice of Proposed Rulemaking (NPRM) does not do that. Instead, it proceeds from a dated view of the marketplace that can only further tilt the regulatory playing field in a way that will not serve consumers' interests. It also offers up a series of expansive conclusions about our Section 616 authority that go beyond the specific provisions Congress included in that law.

It is no surprise that the NPRM starts from a legacy viewpoint. After all, the NPRM revives a 2016 FCC initiative that looked at these same issues. The Commission first launched that 2016 effort earlier that same year through a broad Notice of Inquiry, followed by public listening sessions, before ultimately proposing new rules in an NPRM adopted by a 3-2 vote.¹ The FCC never proceeded to adopt a final order on those proposed rules, and in 2020, the agency terminated the dormant proceeding after years of no new activity in the record.

In the intervening years, the video marketplace has continued to evolve dramatically. Consumers have more programming choices than they did in 2016, especially as over-the-top (OTT) streaming services have emerged and fundamentally altered the competitive landscape. Traditional MVPDs, meanwhile, have seen a sharp decline in market share as consumers continue to cut the cord. Indeed, the market shows signs of fierce competition—as the FCC's own NPRM today acknowledges.

This proceeding—whether intended or not—will only serve to widen the regulatory imbalance between traditional MVPDs and their OTT competitors. Since the FCC first went down this path in 2016, OTT streaming services, including those offered by Big Tech companies, have solidified their positions as the new 800lb gorillas. So it does not strike me that now is the time for the FCC to look at more heavily regulating traditional MVPDs through one-sided rules. At the moment the FCC moves forward with this proceeding, those traditional MVPDs are bleeding subscribers by the millions to their unregulated competitors. If the FCC's past is prologue, then the agency's piecemeal meddling will end up doing more harm than good. And from my perspective, the last thing we should be doing is further widening the gap between traditional MVPDs and Big Tech streaming services when it comes to regulation. Unless and until Congress decides to delegate additional authority to the FCC over OTT streaming, we should act with the appropriate dose of regulatory humility.

Regrettably, this isn't a one-off instance. We've seen in recent months the Biden Administration push for greater government control over the media landscape. A few months ago, for instance, the FCC took the unprecedented step of dictating how MVPDs advertise their prices. And in a separate proceeding, the FCC seems poised to regulate MVPD consumer contracts by restricting termination fees. These initiatives rested on dubious legal authority.

Today's NPRM appears to me to be part and parcel of that broader effort, which I cannot support. It relies on Section 616(a) of the Communications Act, which lists six very specific things the FCC can

¹ See *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Proposed Rulemaking, 31 FCC Rcd 11352, 11394-96 (2016) (dissenting statement of Commissioner Ajit Pai).

regulate in MVPD carriage agreements. That list provides a good clue of how Congress intended to circumscribe our statutory authority. But the NPRM asserts that we may go beyond that list and exercise freewheeling authority over private carriage agreements. I am dubious. A similarly expansive interpretation of Section 616(a) bogged down the Commission's 2016 efforts, so it is unfortunate to see it carried over here.

None of this is to suggest that diverse and independent programmers don't face real challenges to having their content reach wide audiences. I've long been sympathetic to those headwinds and remain open minded about potential paths forward. But I do not see one in this proceeding. I dissent.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Amendment of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115, Notice of Proposed Rulemaking.

A public notice refreshing the record, or a fresh notice of inquiry, would have been appropriate paths for the Commission to take up the questions posed by the notice of proposed rulemaking here. Instead, we opt to tentatively conclude a great deal about the structure of the video marketplace, and what public interest demands we do, on the basis of a stale record. I cannot support that approach and, accordingly, I dissent.

**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	)	
	)	

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 25, 2024

Released: April 26, 2024

Comment Date: [30 days after date of publication in the Federal Register]

Reply Date: [60 days after date of publication in the Federal Register]

By the Commission: Chairwoman Rosenworcel and Commissioners Carr, Starks and Gomez issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	5
A. How Calls to 988 are Currently Routed	7
B. Initial Efforts to Improve Routing for Calls to 988 From Wireless Phones	8
III. DISCUSSION	13
A. Need to Mandate Georouting for Wireless Calls to the 988 Lifeline	14
B. Potential Georouting Solutions for Wireless Calls to the 988 Lifeline	16
C. Legal Authority	32
IV. PROCEDURAL MATTERS	36
V. ORDERING CLAUSES	45
APPENDIX A – INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. Today, we take an important step toward improving access to the critical, life-saving services provided by the 988 Suicide & Crisis Lifeline (988 Lifeline). We continue to face a suicide and mental health crisis that profoundly impacts many people living throughout the United States. According to the Centers for Disease Control and Prevention (CDC), suicide was a leading cause of death in the United States in 2021, resulting in over 48,000 deaths.¹ The National Institute of Mental Health estimated that one in five U.S. adults experienced mental illnesses that ranged in severity in 2021.² Over the last several years, the Commission has acted to make it easier for those in crisis to get help by designating and

¹ See Centers for Disease Control and Prevention, *Suicide Data and Statistics* (Nov. 29, 2023), <https://www.cdc.gov/suicide/suicide-data-statistics.html>. According to the CDC, provisional data from 2022 also shows that deaths from suicide increased by 2.6% between 2021 to 2022. *Id.*

² See National Institute of Mental Health, *Mental Illness* (Mar. 2023), <https://www.nimh.nih.gov/health/statistics/mental-illness> (citing data from Substance Abuse Mental Health Services Administration, Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health, <https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFRRRev010323.pdf>).

implementing 988 as the easy-to-remember, 3-digit dialing number for the 988 Lifeline.³ Since 2022, those in need of support can call or text 988 and be connected with trained counselors to get the help they need.

2. Based on the original design of the 988 Lifeline system, that help may not, however, be local. Currently, when a caller dials 988, the call is routed to a crisis center based on the caller's area code and exchange.⁴ When the 988 Lifeline was originally established as a ten-digit toll free number in 2005,⁵ most Americans still had landlines.⁶ Trends have since shifted, with more Americans relying on wireless phones to place calls.⁷ This presents a challenge for the 988 Lifeline's area code-based routing system when a caller 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.⁸ This has highlighted a need to improve the routing of wireless calls to 988 so callers are connected to crisis centers based on the caller's location—a process known as georouting⁹—irrespective of the area code associated with the wireless phone.¹⁰

³ *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*).

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 Apr. 22, 2024).

⁵ 988 Suicide & Crisis Lifeline, *The Lifeline's History*, <https://www.samhsa.gov/sites/default/files/988-timeline.pdf> (last visited Apr. 22, 2024) (noting that the National Suicide Prevention Lifeline launched with the number 1-800-273-8255 (TALK) in 2005).

⁶ See *Wireline Competition Bureau and Wireless Telecommunications Bureau Seek Comment on Facilitating Access to 211 Via Wi-Fi Calling*, CC Docket No. 92-105, WC Docket Nos. 18-336 and 21-180, Public Notice, 36 FCC Rcd 7460, 7461 (WCB 2021) (*Wi-Fi Calling Public Notice*) (“[W]hen the Commission designated 211 for nationwide community information and referral services more than 20 years ago, most American consumers called 211 over traditional landline telephones and reached their local 211 call centers over circuit-switched networks. Today, however, more consumers have cell phones than landline telephones, so many consumers attempt to reach 211 services with mobile devices over either their wireless provider's cellular network or a public or private Wi-Fi network.”).

⁷ CTIA estimates that the total number of wireless subscriber connections increased from approximately 207 million in 2005 to 523 million in 2022. See CTIA, *Summary of CTIA's Annual Wireless Industry Survey*, <https://api.ctia.org/wp-content/uploads/2022/09/Summary-of-CTIAs-Wireless-Industry-Survey-2022.pdf> (last visited Apr. 22, 2024) (noting the estimated number of wireless connections for 2005); CTIA, *The Wireless Industry, Industry Data, Number of Wireless Connections*, <https://www.ctia.org/the-wireless-industry/infographics-library> (last visited Apr. 22, 2024) (noting the estimated number of wireless connections for 2022). 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”).

⁸ See *infra* para. 14.

⁹ Georouting is distinct from geolocation, and does not involve the transmission of precise location information with calls. The distinctions between georouting and geolocation are discussed in Section II.B, below.

¹⁰ See, e.g., American Foundation for Suicide Prevention Comments, WC Docket No. 18-336, at 1-2 (rec. Dec. 28, 2020) (American Foundation for Suicide Prevention 988 Geolocation Comments); Crisis Response Network Comments, WC Docket No. 18-336, at 1 (rec. Dec. 15, 2020) (Crisis Response Network 988 Geolocation

(continued....)

3. This past summer, the Substance Abuse and Mental Health Services Administration (SAMHSA), as well as the administrator of the 988 Lifeline, Vibrant Emotional Health (Vibrant or Lifeline Administrator), and other industry partners, successfully completed a proof of concept trial of a potential solution for routing wireless calls to geographically appropriate crisis centers.¹¹ The proof of concept was conducted using calls in a testing environment,¹² and successfully routed calls from wireless handsets to the nearest crisis call center based on the location of the cell tower that originates the call.¹³ Based on the success of this proof of concept, Federal Communications Commission (Commission) Chairwoman Rosenworcel issued letters to the wireless industry encouraging them to take steps to identify and develop a georouting solution for the 988 Lifeline that could be deployed on wireless networks within a reasonable time.¹⁴

4. In this *Second Further Notice of Proposed Rulemaking*, we continue the Commission's work to provide meaningful access to the 988 Lifeline by proposing that we adopt rules requiring wireless carriers to implement a georouting solution for calls to the 988 Lifeline. We acknowledge and commend the work that SAMHSA and the Lifeline Administrator have done to date to explore and test solutions, and seek to build on that effort by developing a record that will clarify the georouting solutions that have been proposed, establish the work that remains for a solution to be deployed on wireless networks, and help us consider how to proceed towards requiring wireless carriers to implement one or more solutions.

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Comments); Mental Health America Comments, WC Docket No. 18-336, at 1 (rec. Dec. 18, 2020) (Mental Health America 988 Geolocation Comments); Vibrant Emotional Health Comments, WC Docket No. 18-336, at 1-2 (rec. Dec. 21, 2020) (Vibrant 988 Geolocation Comments); Letter from Alan S. Tilles, Counsel to Los Angeles County, California, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1-2 (filed Apr. 12, 2024) (Los Angeles County Apr. 12, 2024 *Ex Parte*); 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*) (stating that “[w]ith approximately 80% of calls to 988 made from wireless phones, there 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”); Letter from National Alliance on Mental Illness (NAMI) et al., to Xavier Becerra, Secretary, Department of Health and Human Services, and Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 18-336, at 1-2 (filed Mar. 20, 2024) (NAMI et al., Mar. 20, 2024 Letter); *see also* Steve Scauzillo, *Bill would fix 988 suicide lifeline by connecting callers to resources closer to them*, Los Angeles Daily News (Aug. 14, 2023), <https://www.dailynews.com/2023/08/12/calling-988-to-talk-to-someone-about-suicide-the-connection-could-be-way-off/> (expressing concern that 988 calls are routed based on area code, which may result in a caller speaking with a counselor “thousands of miles away who is unaware of the caller’s local mental health crisis services”).

¹¹ See 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); SAMHSA, *988 Frequently Asked Questions, What work is being done on georouting?*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Apr. 22, 2024) (SAMHSA Georouting FAQ); CTIA Apr. 17, 2024 *Ex Parte* at 2 (stating that “[t]he wireless industry played a leading role in the proof-of-concept trial conducted last summer”).

¹² See 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) (hereinafter *Chairwoman’s September 28, 2023 Letters*). *See also* Intrado Life & Safety Press Release; SAMHSA Georouting FAQ.

¹³ See Intrado Life & Safety Press Release; SAMHSA Georouting FAQ.

¹⁴ 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>.

In so doing, we acknowledge that any georouting solution for 988 will require cooperation between the wireless carriers¹⁵ originating calls and the Lifeline Administrator that controls the call routing platform that receives them to implement a complete end-to-end solution. We, therefore, 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.

II. BACKGROUND

5. The 988 Suicide & Crisis Lifeline is a 24/7 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 is overseen by SAMHSA, a public health agency housed in the U.S. Department of Health and Human Services.¹⁶ The 988 Lifeline is administered by Vibrant, a New York-based mental health non-profit, pursuant to the terms of a grant awarded by SAMHSA.¹⁷ The 988 Lifeline is “available to people in suicidal crisis or emotional distress at any time of the day or night.”¹⁸

6. Responding to a Congressional directive,¹⁹ the Commission adopted rules establishing 988 as the three-digit dialing code for the national suicide prevention and mental health crisis hotline and required all telecommunications carriers, interconnected Voice over Internet Protocol (VoIP) providers, and one-way VoIP providers (those that permit users generally to receive calls from, or terminate calls to, the public switched telephone network) to make any network changes necessary to ensure that people were able to dial 988 to reach the 988 Lifeline by July 16, 2022.²⁰ The Commission subsequently expanded the availability of critical mental health and crisis counseling resources by requiring covered text providers²¹ to allow callers to reach the 988 Lifeline by texting 988.²² Calls and covered text messages²³ to 988 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.”²⁴ The 988 Lifeline received over 23 million calls from people in

¹⁵ In this *Second Further Notice of Proposed Rulemaking*, we use “wireless carrier” to mean Commercial Mobile Radio Service (CMRS) provider as defined in 47 CFR § 9.3.

¹⁶ 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 Apr. 22, 2024).

¹⁷ 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 Apr. 22, 2024).

¹⁸ See 988 Suicide & Crisis Lifeline, *Our Network*, <https://988lifeline.org/our-network/> (last visited Apr. 22, 2024) (explaining that the 988 Lifeline “is a national network of over 200 local crisis centers, allowing the Lifeline to provide local resources with innovative best practices and quality care across the United States”).

¹⁹ See National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 § 3 (2020) (adding subsection (e)(4) to section 251 of the Communications Act of 1934, as amended (the Act)).

²⁰ 47 CFR § 52.200; *988 Report and Order*, 35 FCC Rcd at 7385-92, 7395-97, paras. 28-36 and 41-45.

²¹ For purposes of the 988 rules, a covered text provider “includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.” 47 CFR § 52.201(c)(3).

²² *Text to 988 Second Report and Order*, 36 FCC Rcd at 16903, para. 2; see also 47 CFR § 52.201.

²³ A “[c]overed 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).

distress looking for support between its inception in 2005 and 2021.²⁵ Since the nationwide transition to 988 in July 2022, the 988 Lifeline has received and routed 9.6 million calls, texts, and chats.²⁶ In December 2023 alone, 309,756 calls, 55,663 chats, and 80,026 texts (totaling 445,445 contacts) were routed to a 988 Lifeline crisis call center.²⁷

A. How Calls to 988 are Currently Routed

7. Under current Commission rules, calls to 988 must first be routed to the existing toll free ten-digit access number for the 988 Lifeline (1-800-273-8255).²⁸ When the Commission established 988, it found that such routing would be the most efficient means to enable 988 callers to reach the existing national suicide prevention hotline, and explained that routing to the 988 Lifeline's toll free number provided "considerable benefits" both for covered providers and the 988 Lifeline itself, which would enable faster implementation, lower costs to maintain 988 routing, and better service.²⁹ Calls to the 988 Lifeline's toll free access number are terminated to a single aggregation point, specifically, an interactive voice response (IVR) where callers are provided with a menu of connection options. Veterans, service members, and their families may connect to the Veterans Crisis Line operated by the Department of Veterans Affairs by pressing "1."³⁰ Callers may also reach a Spanish language line by pressing "2" and specialized LGBTQI+ services by pressing "3."³¹ All other calls are 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.³² In the event that a center is unable to answer, the call is routed to the Lifeline's national backup network.³³ Routing to the appropriate crisis call center is handled by a

(Continued from previous page)

²⁴ *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).

²⁵ 988 Suicide & Crisis Lifeline, *Suicide Prevention By the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited Apr. 22, 2024).

²⁶ See SAMHSA, *988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics> (last visited Apr. 22, 2024).

²⁷ *Id.*

²⁸ 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. 47 CFR § 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).

²⁹ *988 Report and Order*, 35 FCC Rcd at 7395, para. 42.

³⁰ U.S. Dept. of Veterans Affairs, *Veterans Crisis Line*, <https://www.veteranscrisisline.net/> (last visited Apr. 22, 2024).

³¹ See SAMHSA, *988 Lifeline's First Year: A Network of Hope* (July 13, 2023), <https://www.samhsa.gov/sites/default/files/988-one-year-anniversary-fact-sheet.pdf>; 988 Suicide & Crisis Lifeline, *LGBTQI+*, <https://988lifeline.org/help-yourself/lgbtqi/> (last visited Apr. 22, 2024).

³² See Vibrant Emotional Health Reply Comments, WC Docket No. 18-336, at 1 (rec. Jan. 11, 2021) (Vibrant 988 Geolocation Reply). 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.

³³ 988 Suicide & Crisis Lifeline, *How Our Calls Are Routed*, <https://988lifeline.org/wp-content/uploads/2022/09/HowOurCallsAreRouted-InfographicsRefresh-2.pdf> (last visited Apr. 22, 2024).

centralized routing system overseen by the Lifeline Administrator and supported by a grant from SAMHSA.³⁴

B. Initial Efforts to Improve Routing for Calls to 988 From Wireless Phones

8. On April 15, 2021, the Wireline Competition Bureau transmitted a report to Congress examining the feasibility and costs of including automatic dispatchable location in calls to 988,³⁵ as required by the National Suicide Designation Act of 2020.³⁶ While the statute required the Commission to focus on location information conveyed with a 988 call, regardless of the technological platform used,³⁷ the record developed for the preparation of the report evidenced 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).³⁸

9. 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.³⁹ 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.⁴⁰ By contrast, geolocation involves creating systems for the transmission of precise location information (e.g., street address) of the caller that

³⁴ 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, 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.

³⁵ FCC, 988 Geolocation Report – National Suicide Hotline Designation Act of 2020 (2021), <https://docs.fcc.gov/public/attachments/DOC-371709A1.pdf> (988 Geolocation Report).

³⁶ National Suicide Hotline Designation Act of 2020 § 5(a).

³⁷ *Id.*

³⁸ See, e.g., Vibrant 988 Geolocation Comments at 3 (“It is important to note that only coarse location data (e.g. city, state or zip code) is required for routing purposes, and an exact position would only be required for dispatching emergency services.”).

³⁹ 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 988 Geolocation Reply at 4 (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.”).

⁴⁰ See Report and Recommendation on the Feasibility of Establishing a 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline from Travis Kavulla, Chair, North American Numbering Council, to Kris Anne Monteith, Chief, FCC Wireline Competition Bureau, WC Docket No. 18-336, CC Docket No. 92-105, at 31, 39-40 (May 10, 2019), <https://nanc-chair.org/archive.html> (NANC Report) (discussing possible use of existing N11 codes and noting that for 511, “service providers would need to program the 511 code for routing to a 10-digit number for the appropriate call center, based on the originating number or the cell site serving the originating number at the time the call is made”).

could be provided to first responders.⁴¹ As the Bureau’s report to Congress highlighted, transmitting precise location information with calls to the 988 Lifeline presents a variety of technical, legal, and privacy concerns⁴² that would require significant investigation and time to resolve.⁴³

10. On May 24, 2022, the Commission, in coordination with the U.S. Department of Health and Human Services and the U.S. Department of Veterans Affairs, convened a forum on the challenges and opportunities related to geolocation for calls to the 988 Lifeline.⁴⁴ During that forum, Intrado,⁴⁵ a provider of public safety-related software 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.⁴⁶ The

⁴¹ See *988 Geolocation Report* at 14 (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”).

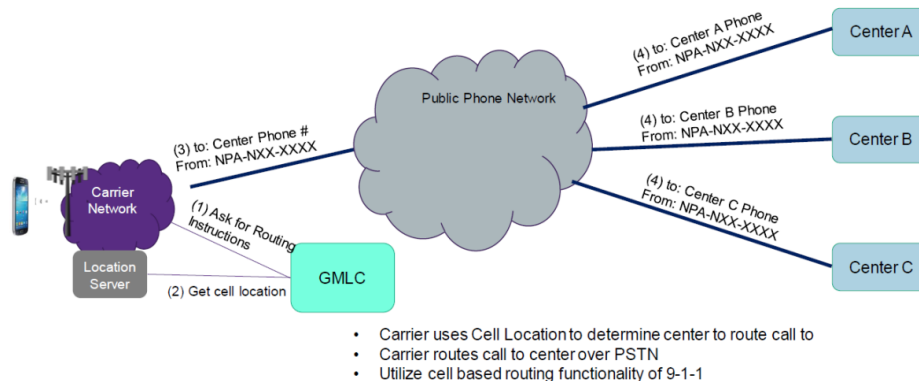
⁴² See, e.g., CTIA Comments, WC Docket No. 18-336, at 2 (rec. Dec. 21, 2020) (questioning the role of PSAPs in delivering dispatchable location information with a 988 call, as well as necessity of customer premise equipment (CPE) to accept location information); Intrado Comments, WC Docket No. 18-336, at 5 (rec. Dec. 21, 2020) (noting that 988 would need to be included in the current 911 “emergency mode” call flow that would require numerous changes); Mitel Cloud Services, Inc. Comments, WC Docket No. 18-336, at 3 (rec. Dec. 21, 2020) (stating it would be unable to use third-party vendors to transmit dispatchable location information with 988 calls); NAMI Comments, WC Docket No. 18-336, at 2 (rec. Dec. 21, 2020) (NAMI 988 Geolocation Comments) (emphasizing that “[f]ailure to ensure the privacy of callers may damage trust in 988 and discourage help-seeking”); USTelecom Comments, WC Docket No. 18-336, at 5-6, 8-9 (rec. Dec. 21, 2020) (describing technical challenges and privacy concerns related to enabling dispatchable location for 988 calls); NTCA Reply Comments, WC Docket No. 18-336, at 4 (rec. Jan. 11, 2021) (questioning whether public safety exemption to section 222 of the Communications Act, Privacy of Customer Information, would apply to 988). The 988 Geolocation Report states that “[t]he record lacks significant discussion of Commission legal authority to require transmission of dispatchable geolocation with 988 calls.” *988 Geolocation Report* at 13.

⁴³ For example, we recently adopted rules requiring CMRS providers to use device location information to route wireless 911 voice calls and real-time text (RTT) communications to 911, rather than the location of network elements such as cell site or sector. See *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4, at 13, 35, paras. 21, 66-67 (Jan. 25, 2024). The legal, technical, and privacy considerations of using precise location to route wireless 911 calls differ from those in the 988 context. See FCC, 988 Geolocation Forum Combined Presentation Slides at 17 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>; *988 Geolocation Report* at 11-17.

⁴⁴ See FCC, 988 Geolocation Forum (May 24, 2022), <https://www.fcc.gov/news-events/events/2022/05/forum-geolocation-988>.

⁴⁵ At the time of the May 2022 Forum, Intrado Corporation was a subsidiary of West Technology Group. Intrado Life & Safety, Inc. Reply Comments, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, at 1 & n.2 (rec. June 6, 2023) (Intrado Life & Safety 988 Outage Reply). West Technology Group was and remains the parent company of CX360, which provides voice and SMS-based services to the 988 Lifeline pursuant to a contract with the Lifeline Administrator. CX360 d/b/a Mosaicx Comments, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, at 2 (rec. May 8, 2023); CX360 Reply Comments, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, at 6, n.11 (rec. June 6, 2023). Intrado Life & Safety, Inc. has reported that, as of January 31, 2023, it is a distinct entity from West Technology Group, LLC, but has retained the “Intrado” brand. Intrado Life & Safety 988 Outage Reply at 1 & n.2. For the purposes of this *Second Further Notice of Proposed Rulemaking*, references to “Intrado” refer to Intrado Corporation prior to January 31, 2023. References to “Intrado Life & Safety” refer to the entity that was involved in the proof of concept that occurred in 2023. See *supra* note 11. Intrado Life & Safety provides public safety-related software systems and services, including as a provider of 911 services for PSAPs and Originating Service Providers. See Intrado Life & Safety Press Release; Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado Life & Safety, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479 et al., at 1 (filed Jan. 4, 2024).

solution it presented would involve the creation of a database that would match the cell tower originating the call to 988 with a ten-digit phone number associated with the nearest crisis center. That ten-digit number would then be used to route the call to a geographically appropriate crisis center rather than the area code and exchange for the caller's wireless phone. Intrado provided the following graphic to illustrate this solution:⁴⁷



11. 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 carrier began a proof of concept to test a modified version of Intrado's original cell-based georouting solution in a lab environment, i.e., without using any actual caller data from live calls.⁴⁸ The modified solution also relied on cell tower information, but routed calls by “overlay[ing] static wire center boundaries to create a ‘destination code’ representing the nearest crisis call center.”⁴⁹ Commission staff regularly received briefings concerning the proof of concept, provided technical assistance and guidance in response to questions asked during those briefings, and received progress reports.

12. The proof of concept was completed during the summer of 2023 and resulted in calls being successfully routed in the testing environment from wireless handsets to the nearest crisis center irrespective of the area code associated with the handset.⁵⁰ To build on that success, on September 28, 2023, the Chairwoman and HHS Assistant Secretary for Mental Health and Substance Use Dr. Miriam Delphin-Rittmon sent letters to AT&T, T-Mobile USA, Inc., Verizon, CTIA, Competitive Carriers Association (CCA), and Rural Wireless Association (RWA) urging wireless carriers to take the necessary

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⁴⁶ Intrado, 988 Geolocation Forum Presentation at 103 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>.

⁴⁷ *Id.*

⁴⁸ See SAMHSA Georouting FAQ (noting that testing “did not involve real-time calls”); Intrado Life & Safety Press Release.

⁴⁹ Intrado Life & Safety Press Release. We seek comment on the technical specifications of the solution tested by the proof of concept below.

⁵⁰ See 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>.

steps to identify and develop a 988 georouting solution that could be deployed in their wireless networks.⁵¹ Commission staff subsequently held meetings with each recipient of the letters to discuss what steps have been taken in response to the Chairwoman's letters as well as any identified concerns in implementing a georouting solution.⁵² Commission staff also inquired about possible timeframes and what the Commission could do to support or assist the wireless industry's efforts.

III. DISCUSSION

13. We seek to build on the progress made by all stakeholders to date to identify a georouting solution for the 988 Lifeline that will enhance the support and resources available to callers in crisis. Specifically, we propose to adopt a rule that would require wireless carriers to implement one or more georouting solutions for calls to the 988 Lifeline, and initiate this *Second Further Notice of Proposed Rulemaking* to thoroughly and transparently consider georouting solutions that could be within the scope of that mandate, the costs and benefits of mandating a georouting solution, and the work that remains to implement a georouting solution in a timely manner.⁵³

A. Need to Mandate Georouting for Wireless Calls to the 988 Lifeline

14. We believe that requiring wireless carriers to use a georouting solution for the 988 Lifeline is essential to ensure that Americans have access to critical suicide prevention and crisis services when reaching the 988 Lifeline with a wireless device. Indeed, the record developed for the preparation of the 988 Geolocation Report evidenced a need for more accurate routing of calls to the 988 Lifeline to account for the fact that the majority of calls placed to the 988 Lifeline are from wireless phones,⁵⁴ and the area codes of those phones often do not correspond to the location of the caller.⁵⁵ The broader 988 record also indicated that such discrepancies may be more prevalent among certain groups, such as college students⁵⁶ and individuals with ported numbers.⁵⁷ According to mental health and crisis

⁵¹ 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>; Chairwoman's September 28, 2023 Letters, *supra* note 12.

⁵² See, e.g., CTIA Apr. 17, 2024 *Ex Parte* at 2 (stating that, since the proof-of-concept testing, the wireless industry's "engagement has only expanded . . . spurred on by letters from Chairwoman Rosenworcel and Dr. Miriam E. Delphin-Rittmon" and that "CTIA and the nationwide wireless providers have collaborated closely with the Commission, SAMHSA, Vibrant, and other stakeholders to identify ways to provide georouting information that will enable wireless calls to be routed to SAMHSA's and Vibrant's preferred call centers").

⁵³ See e.g., Letter from Michael McMenamin, Counsel, Winning Strategies Washington, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-336, at 1-2 (filed Jan. 12, 2024) (NAMI *Ex Parte*) ("NAMI is incredibly hopeful that the FCC/SAMHSA will develop 988 georouting solutions sooner rather than later to provide routing certainty to calls from those individuals in crisis."); NAMI et al., Mar. 20, 2024 Letter at 1-2 (urging, on behalf of the nation's mental health and substance use disorder community, that the Commission take "immediate action to improve the routing of 988 calls so that people in crisis are connected to critical care available in their communities"). As discussed above, we reiterate that the proposals herein pertain to georouting solutions. We are not considering solutions to geolocation for the 988 Lifeline at this time. See *supra* para. 9 (distinguishing georouting from geolocation).

⁵⁴ The Lifeline Administrator estimates that 80% of calls placed to the 988 Lifeline are from wireless phones. Vibrant 988 Geolocation Comments at 2. See also CTIA Apr. 17, 2024 *Ex Parte* at 1-2 ("With approximately 80% of calls to 988 made from wireless phones, there 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.").

⁵⁵ See SAMHSA, 988 *Frequently Asked Questions, How do calls to 988 get routed?*, <https://www.samhsa.gov/find-help/988/faqs> (last visited Apr. 22, 2024).

⁵⁶ See, e.g., Boulder Regional Emergency Telephone Service Authority (BRETSA) Comments, WC Docket No. 18-336, at 7 (rec. Dec. 21, 2020) (describing challenges associated with routing calls for college students attending school in a different state than their wireless phone's area code) (BRETSA 988 Geolocation Comments); see also (continued....)

counseling experts, ensuring that calls are routed to a crisis center that is geographically appropriate based on the caller's location (rather than the area code of their phone) is critical to the 988 Lifeline's objective of providing life-saving resources to those in need of public health and safety resources.⁵⁸ Routing individuals in crisis to local crisis centers also allows counselors to respond to regional cultural and economic factors as well as a community's unique stressors.⁵⁹ Moreover, local crisis centers have important connections to local care resources that, when used, can reduce the risk of suicidality and future crises, and avert unnecessary use of emergency services and law enforcement.⁶⁰

15. We, therefore, seek comment on our proposal to mandate the use of one or more georouting solutions by wireless carriers originating calls to the 988 Lifeline to achieve these benefits. Some major stakeholders have already been exploring georouting solutions with SAMHSA and the Lifeline Administrator,⁶¹ and we support voluntary efforts by carriers and our federal partners to deploy solutions in wireless networks in the near term. Indeed, we would welcome insights from wireless carriers that voluntarily deploy georouting solutions in their networks, as such information would inform our decision-making. The launch of this proceeding reflects our belief that a rule requiring wireless carriers to implement a georouting solution for the 988 Lifeline is necessary to ensure that the critical benefits of georouting are realized nationwide and within a reasonable period of time. We seek comment on that view and whether there would be any negative impacts to mandating the use of georouting solutions to connect callers to the 988 Lifeline with local crisis centers.⁶² We ask that commenters

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Stephanie Hepburn, *The Latest 988 Network Updates – Dr. Tia Dole on the Unified 988 Platform, Subnetworks, Marketing and Geo-Routing*, Crisis Now (July 14, 2023), <https://talk.crisisnow.com/the-latest-988-network-updates-dr-tia-dole-on-the-unified-988-platform-subnetworks-marketing-and-geo-routing/> (expressing concerns about the 988 Lifeline's current routing method because many people, particularly students and young people, have mobile phones with area codes that do not correspond to their physical locations).

⁵⁷ See, e.g., Vibrant Emotional Health Comments, WC Docket No. 18-336 at 4-5 (rec. May. 8, 2023) (stating that “[n]early 40% of individuals live in a metropolitan statistical area that does not match their cell phone”); BRETSA Reply Comments, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, at 2 (rec. June 6, 2023) (“[N]umber-portability enables people to keep their numbers when they move from the geographic area to which their area code is assigned.”); Letter from Janice Hahn, Supervisor, Fourth District, County of Los Angeles, to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 18-336, at 1 (filed Apr. 18, 2024) (County of Los Angeles Supervisor Apr. 18, 2024 *Ex Parte*) (“This is especially true in big metropolitan areas like Los Angeles County where people move from around the country and keep their cell phone numbers.”); see also Jennifer Brown, *Not all 988 mental health crisis calls are reaching Colorado, but they're still getting answered*, the Colorado Sun (July 31, 2023), <https://coloradosun.com/2023/07/31/988-hotline-mental-health/> (stating that routing calls to the 988 Lifeline based on area code poses challenges for Colorado due to “a high number of transplants who moved [to Colorado] with out-of-state area codes and a large military population”).

⁵⁸ See, e.g., Vibrant 988 Geolocation Comments at 2; Crisis Response Network 988 Geolocation Comments at 1; NAMI et al., Mar. 20, 2024 Letter at 1-2.

⁵⁹ See e.g., American Association of Suicidology Comments, WC Docket No. 18-336, at 2-3 (rec. Dec. 21, 2020); Crisis Response Network 988 Geolocation Comments at 1; NAMI 988 Geolocation Comments at 2.

⁶⁰ See, e.g., American Foundation for Suicide Prevention 988 Geolocation Comments at 1; BRETSA 988 Geolocation Comments at 17; Mental Health America 988 Geolocation Comments at 1 (emphasizing that access to local health resources for follow-up care “can help to reduce the risk of future crises”); Vibrant 988 Geolocation Comments at 3 (“Local centers are also able to provide connections to and knowledge of local resources and services, including follow-up care that reduces the risk of suicidality in individuals in crisis.”); NAMI *Ex Parte* at 1 (stating that “georouting to the nearest 988 call center will provide expeditious care for those in crisis and ultimately save lives”); NAMI et al., Mar. 20, 2024 Letter at 2.

⁶¹ See, e.g., Intrado Life & Safety Press Release; CTIA Apr. 17, 2024 *Ex Parte* at 2.

⁶² As noted above, the benefits of implementing a georouting solution were explored in connection with the 988 *Geolocation Report* and were further explored at the May 2022 Geolocation Forum. The comments and documents submitted to the Commission in connection with these activities are available in the docket for this proceeding and (continued....)

address any policy considerations or facts we should consider to evaluate whether a rule establishing a georouting mandate is needed.

B. Potential Georouting Solutions for Wireless Calls to the 988 Lifeline

16. We seek comment on potential georouting solutions for the 988 Lifeline. As noted above, Intrado proposed one potential solution during the May 2022 Geolocation Forum.⁶³ SAMHSA, the Lifeline Administrator, Intrado Life & Safety, and a wireless carrier subsequently tested a modified georouting solution during the proof of concept completed during the summer of 2023.⁶⁴ Since then, additional major carriers have voluntarily begun work to develop additional georouting solutions with SAMHSA and the Lifeline Administrator that may take different approaches to routing calls to crisis centers.⁶⁵ We seek comment from wireless carriers on the viability of these and any other solutions that have been proposed to date, and the work that still needs to be done to timely deploy one or more of the solutions on wireless networks. We also seek data, documents, and other information that provide details about the current status of all proposed georouting solutions. In so doing, we invite stakeholders to comment on whether georouting solutions that have been developed to date by major carriers would be viable for smaller carriers, and any distinctions that need to be considered for smaller carriers when mandating the use of a georouting solution for the 988 Lifeline.

17. *Technical Specifications.* We seek information on the technical specifications for all proposed solutions, documented or otherwise, and diagrams showing how each solution would route wireless calls to the 988 Lifeline and/or a description of the same. We also seek technical specifications and diagrams showing how wireless calls would be routed to geographically appropriate call centers once received by the routing platform administered by the Lifeline Administrator. Specifically, we seek comment on each functional step that would need to be completed to successfully route a call from a wireless carrier to a geographically appropriate crisis center, the specific entity that would or could perform each function, and the facilities and systems required to perform each function. For example, are there any parties beyond the wireless carriers originating the calls and the Lifeline Administrator responsible for terminating the calls that would need to perform any function, or provide any facility or service, for a call to be appropriately routed pursuant to a proposed solution? What specific functions would the Lifeline Administrator and/or its service providers need to perform to successfully terminate calls to geographically appropriate crisis centers once received by the 988 Lifeline's centralized routing platform? What specific facilities and systems would be needed to perform those functions? We ask that commenters address whether the technical and functional requirements of a particular georouting solution present legal or other barriers that could limit the adoption of the solution by other entities, and whether there are means to surmount or minimize those barriers. For instance, do any of the functional steps of a georouting solution involve proprietary elements that would limit whether and how other wireless carriers could implement it (e.g., by requiring a service or licensing agreement and/or paying a fee)? Lastly, it is our understanding that when a caller to the 988 Lifeline selects a specialized service (e.g., "1" for Department of Veterans Affairs; "2" for a Spanish language line; or "3" for specialized LGBTQI+ services) when connected to the 988 Lifeline's IVR, those calls will be directed to appropriate crisis centers based on those selections. We seek comment on whether georouting is necessary for these specialized services, and whether there are any unique considerations for routing calls that impact our

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will be considered when we evaluate the record developed in response to this *Second Further Notice of Proposed Rulemaking*.

⁶³ See *supra* para. 10.

⁶⁴ See Intrado Life & Safety Press Release.

⁶⁵ See CTIA Apr. 17, 2024 *Ex Parte* at 2 (noting that, since the proof-of-concept testing, "CTIA and the nationwide wireless providers have collaborated closely with the Commission, SAMHSA, Vibrant, and other stakeholders to identify ways to provide georouting information that will enable wireless calls to be routed to SAMHSA's and Vibrant's preferred call centers.").

proposals. Do the georouting solutions under development contemplate routing for such calls? Do stakeholders agree that georouting solutions are not needed when a caller to 988 selects a specialized service?

18. *Correlating the Caller's Location with Call Centers.* We seek comment on how each proposed solution identifies the caller's location and correlates that location with a geographically appropriate crisis call center. For instance, both the georouting solution originally proposed by Intrado at the May 2022 Forum and the modified Intrado Life & Safety solution tested by the proof of concept conducted during the summer of 2023 identified the location of the caller based on the cell tower that originated the call, and used the location of that cell tower to determine the closest crisis center.⁶⁶ As noted above, calls to certain N11 services (e.g., 211) are also routed to call centers based on the geographic location of the cell tower that originates the call.⁶⁷ We believe that a georouting solution that is based on cell tower information would best identify a caller's location and thus enable routing the call to a geographically appropriate crisis call center, and we seek comment on this belief. If commenters support alternative methods of identifying the caller's location, we ask that they specify those methods and provide any technical information needed to understand how the alternate means of identifying a caller's location would function in a georouting solution. We also seek comment on whether any means of identifying a caller's location may be impacted by the wireless handset that a caller uses to dial 988.

19. Once the caller's location has been determined, to complete the georouting path that location must be matched with a nearby crisis center. What geographic boundaries would be applied by each proposed solution to do so? For instance, the Intrado Life & Safety solution tested during the proof of concept used wire centers as the geographic boundary for associating the cell tower that originated the call with the nearest call center.⁶⁸ We assume that other geographic boundaries could similarly be applied, e.g., determining the most geographically appropriate call center based on its proximity to the county in which the cell tower originating the call is located. We seek comment on the geographic boundaries that are utilized by the georouting solutions proposed to date, whether those boundaries comport with any requirements delineated by SAMHSA, the Lifeline Administrator, and state and territory 988 authorities for the network of 988 crisis centers, and whether the Commission should mandate the use of one or more particular geographic boundaries. Given that there are over 200 crisis call centers across the United States, we ask that commenters address whether certain geographic boundaries are sufficiently granular to achieve the goal of connecting callers with local resources during a time of crisis and whether there are any geographic boundaries that would be overbroad. For instance, would using a state-level boundary be too broad where there are multiple crisis centers within a particular state? How should we factor in the growing number of crisis centers and their impact on the geographic boundary adopted for a georouting solution? Our understanding is that the 988 Lifeline's crisis centers are independently owned and operated and select their own coverage area, which may be based on zip code, area code, county, or state.⁶⁹ How would a proposed georouting solution address established coverage areas for particular crisis centers (e.g., any crisis centers that must receive calls from specified counties)? We also seek comment on whether any geographic boundaries would be too granular in a manner that implicates privacy or other concerns.⁷⁰ If different georouting solutions propose to use

⁶⁶ Intrado, 988 Geolocation Forum Presentation at 103 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf>; Intrado Life & Safety Press Release.

⁶⁷ See *supra* note 40.

⁶⁸ See Intrado Life & Safety Press Release.

⁶⁹ 988 Suicide & Crisis Lifeline, *How Our Calls Are Routed*, <https://988lifeline.org/wp-content/uploads/2022/09/HowOurCallsAreRouted-InfographicsRefresh-2.pdf> (last visited Apr. 22, 2024).

⁷⁰ See, e.g., NAMI Geolocation Comments at 2 (expressing concern that “[f]ailure to ensure the privacy of callers may damage trust in 988 and discourage help-seeking”); Trevor Project Comments, WC Docket No. 18-336, at 2 (rec. Dec. 21, 2020) (emphasizing that the “privacy of crisis callers is vital”); County of Los Angeles Supervisor Apr. 18, 2024 *Ex Parte* at 1 (stating that “georouting will still protect the privacy of the caller by not revealing their (continued....)

different geographic boundaries (e.g., one solution uses wire center while another uses county), should we allow different wireless carriers to implement one of multiple technically feasible options? Or would permitting wireless carriers to implement a number of geographic boundaries impact public interest and the public's expectation of routing to a "geographically appropriate" crisis call center? What other issues, data, and documents should be considered to assess how a proposed solution identifies a caller's location and matches that location to a geographically appropriate crisis call center, and whether that match achieves the public and mental health needs served by the 988 Lifeline? Are there any other factors that should be considered in determining whether routing to a particular crisis center would be appropriate?

20. *Required Routing Data and Transmission.* We seek comment on the routing data required to effectuate each proposed solution and how it would be transmitted. SAMHSA, as the agency with oversight of the Lifeline Administrator, must ultimately determine the routing data that it will deem acceptable and that it will require the 988 Lifeline's systems to be configured to read. What specific data would the currently contemplated solutions require wireless carriers to transmit when originating calls to the 988 Lifeline (e.g., a Federal Information Processing Standard code for a solution utilizing county as a geographic boundary, a unique destination code for a solution using other parameters, any carrier-specific or other additional digits or data points) and how would wireless carriers pass that data through with the call? Would the routing information be entered into a particular field in the call header of a Session Initiation Protocol (SIP) message (e.g., in the Jurisdictional Identification Parameter, P-Asserted-Identity, or other field)? Would it be necessary to redefine an existing SIP header field or define a new one to transmit the data? Should a non-standardized field, such as an X-Header, be used to contain the data? Does any field used to transmit the routing data need to be identified as a mandatory SIP header field that is unchanged as the SIP message traverses security gateways from one network to another? Should solutions to support georouting avoid changes to the SIP header field by the Internet Engineering Task Force to avoid delays in deployment? We ask that commenters describe in detail the advantages and disadvantages of using a particular call header field to transmit any required routing information. We also ask that commenters address any privacy or other concerns implicated by the transmission of certain routing data with calls to the 988 Lifeline. For instance, what specific information would be received by the Lifeline Administrators and/or its service providers when the call is routed to the Lifeline's centralized routing platform and what, if anything, about the caller could be inferred from that data? Does the Lifeline Administrator have a preference for receiving certain routing data a certain way as the entity responsible for terminating calls to local crisis centers? If different wireless carriers wished to utilize different georouting solutions, transmitting different routing data via different call header fields, could the Lifeline Administrator accommodate that to perform the terminating end of each solution? If that were feasible, what would be the advantages and disadvantages of a multiple solution approach versus requiring all wireless carriers to transmit the same data with the same values in the same field?

21. *Technical Limitations.* We seek comment on the technological limitations of each solution that may prevent a call from being routed to a geographically appropriate crisis call center, if any. For instance, would a particular solution work if the caller is roaming or using Wi-Fi calling?⁷¹ Could the routing information entered into the call header be stripped out if the call traverses a non-IP interconnection point? Does the impact of one or more intermediate providers affect the transmission of

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exact location, only ensuring their call is routed to the local call center"); CTIA Apr. 17, 2024 *Ex Parte* at 1-2 (stating that routing "calls to a crisis center that corresponds with the location of the caller, without providing the caller's precise location . . . would enable better alignment of callers and resources while also protecting consumers' privacy"); NAMI et al., Mar. 20, 2024 Letter at 2 (arguing that the proof-of-concept "meets the test of protecting callers' privacy while ensuring that the services and resources they receive are in their current community").

⁷¹ The Commission recognized the importance of community information and referral services available through 211 and acknowledged and sought comment on the challenges callers have when seeking access to these services using Wi-Fi technologies. See *Wi-Fi Calling Public Notice* at 1-3. The Commission also sought comment on future availability of 988 over Wi-Fi calling generally. *Id.* at 2.

the call header to the Lifeline Administrator and/or its service providers? Are there different technical considerations for routing calls dialed directly to the 988 Lifeline's toll free access number and calls dialed to the 3-digit code? As wireless networks evolve and carriers retire older technologies, what impact, if any, would this have on the implementation of a georouting solution for the 988 Lifeline?⁷² Are there any technical limitations of the 988 Lifeline's systems that would prevent the Lifeline Administrator from being able to effectively implement the terminating end of a particular solution? Does the wireless handset that a caller uses to dial 988 present any technical limitations or challenges? If a particular wireless call is out-of-scope for a georouting solution, or the routing data transmitted with a call is or becomes unreadable for any reason, what would occur? We recognize that SAMHSA and the Lifeline Administrator are best suited to ensure that calls are routed properly and ultimately answered by a call center. From the perspective of the originating wireless carrier and its customers, would an out-of-scope call or call with unreadable routing data default to the current routing by area code or be redirected to a national back-up? Is it possible that the call would be disconnected? While the benefits of improving routing for 988 calls are clear, it is paramount that callers be connected with critical, life-saving help even if the closest crisis center cannot be identified or reached. We ask that commenters address the calls that would be successfully routed from originating wireless carriers to crisis centers pursuant to a proposed solution and those that may not be due to technological or other limitations, and explain how any calls that fall in the latter group will nonetheless be connected to an appropriate 988 crisis center. If there are states or territories that will be excluded from any georouting solution due to technical or facility limitations, in whole or in part, we ask that commenters identify those areas.

22. *Infrastructure and System Considerations.* We seek comment on any network infrastructure and system changes or upgrades that may be required at each step of the call path for wireless carriers to successfully implement the proposed georouting solutions. For example, would wireless carriers need to develop certain technologies to support the proposed solutions? Would any network upgrades or programming changes be necessary? Are any specific upgrades necessary to the 988 Lifeline's routing platform and other facilities and systems that could impact the availability of a georouting solution to originating wireless carriers and their customers? Would any additional entities have to upgrade their infrastructure, facilities, and systems to perform their roles in a georouting solution, enable callers to the 988 Lifeline to benefit from a georouting solution, or to continue providing services to the 988 Lifeline after the implementation of a georouting solution? Are there any other considerations that impact when, whether, and how any needed infrastructure or system changes are implemented, such as administrative challenges or contractual issues?

23. *Costs and Benefits.* We seek comment on the costs and benefits of deploying one or more of the proposed solutions. What specific costs would be incurred by the wireless carriers originating calls, any necessary intermediaries, and the Lifeline Administrator responsible for terminating the calls? Would significant costs need to be incurred for network or system changes or upgrades? Are there ways to minimize the costs, especially on non-nationwide or small providers? Are there contracting costs or costs associated with accessing proprietary functions? Do any of the proposed georouting

⁷² Several nationwide wireless carriers and smaller carriers have retired their 3G networks. AT&T retired its 3G network in February 2022. See AT&T Community Forums, *What is happening with 3G?*, <https://forums.att.com/page/FAQ-Wireless-5G> (last visited Apr. 22, 2024). Verizon phased out its 3G network in December 2022. See Mike Haberman, *3G CDMA Network Shut Off Date Set for December 31, 2022*, Verizon (Dec. 20, 2022), <https://www.verizon.com/about/news/3g-cdma-network-shut-date-set-december-31-2022>. T-Mobile retired the former Sprint's 3G Code-Division Multiple Access (CDMA) network in March 2022, and T-Mobile's 3G Universal Mobile Telecommunications System (UMTS) network in July 2022. T-Mobile, *Network Evolution*, <https://www.t-mobile.com/support/coverage/t-mobile-network-evolution> (last visited Apr. 22, 2024). See also USCellular, *3G CDMA Network Shutdown*, <https://www.uscellular.com/3g-shutdown> (last visited Apr. 22, 2024) (noting that USCellular retired its 3G network on January 14, 2024); Cellcom, *2G/3G Shutdown, Upcoming Technology Change*, <https://www.cellcom.com/newsroom/2g3g-shutdown> (last visited Apr. 22, 2024) (noting that Cellcom retired its 3G network in 2023).

solutions otherwise raise compensation issues between any of the participants involved in the solutions, including, but not limited to, charges to wireless carriers, intermediaries, and/or the Lifeline Administrator to access elements of a georouting solution, charges assessed by entities interested in marketing a georouting solution to carriers as a service,⁷³ or interconnection fees? If so, how would or should compensation issues be addressed?

24. What are the benefits of utilizing a particular routing solution? In requiring calls and texts to 988 to be routed to the Lifeline, the Commission found that enabling more Americans to access the 988 Lifeline's life-saving suicide prevention and mental health crisis services far surpassed the cost of implementation.⁷⁴ In this next phase of improving routing to 988, we seek comment on the ways in which a georouting solution might further reduce suicides and future crises beyond our initial estimates.⁷⁵ Is there a way of measuring or quantifying the impact that a georouting solution would have on the outcomes of calls to the 988 Lifeline? Are there any benefits that we have not identified that could be realized from a georouting solution? Do the public interest benefits of routing callers in crisis to geographically appropriate crisis call centers outweigh any potential costs? We seek comment on whether there are unique circumstances or factors with respect to routing that would change this analysis. We also seek comment on the costs and benefits of wireless carriers implementing multiple georouting solutions with different geographic parameters and technical requirements.

25. *Testing of Proposed Solutions.* We seek comment from wireless carriers on the testing that has been completed for proposed georouting solutions, the results of the tests, and any work that is in progress to address any implementation or other issues discovered as a result of the tests. The ultimate goal of the coordination between SAMHSA, the Lifeline Administrator, and the Commission is to identify one or more georouting solutions that are compatible with the 988 Lifeline's systems and achieves the policy objectives of connecting callers in crisis with local support. We ask that wireless carriers address how any testing conducted demonstrates that a proposed solution achieves these objectives. How many tests have been conducted to date and with which carriers or other entities? What georouting solutions were the subjects of those tests and how did participants propose to route calls to geographically appropriate crisis centers? What technical specifications, assumptions, or other parameters were applied to the tests? Were any problems or challenges identified in connection with those tests? How have those problems or challenges been resolved or what are the proposals for resolving them? Has any testing indicated that one solution is technologically superior and/or closer to deployment? Has any testing indicated that a particular solution could be implemented in the wireless networks of multiple carriers with only minor adjustments, if any? Has the testing established that both the originating end and the terminating end of the georouting solution are viable, or has the testing focused on limited aspects of the solution? Will wireless carriers participate in any traffic studies conducted to evaluate georouting solutions, and if so, what data would be required to conduct those studies, what entities would be required to provide the data, and what would stakeholders hope to learn from those studies?

26. *Timeline for Deployment.* We seek comment on timelines for the deployment of one or more georouting solutions. We ask that commenters specify the work that must still be completed by wireless carriers, SAMHSA, the Lifeline Administrator, and/or any third parties to implement a georouting solution for the 988 Lifeline and the timeline(s) for the completion of that work. We seek comment on whether both the originating functions that need to be performed by wireless carriers and the

⁷³ See Intrado Life & Safety, *988 Call Routing for Wireless Carriers, Improve 988 Routing Speed & Accuracy*, <https://www.intrado.com/carrier-solutions/988-call-routing> (last visited Apr. 22, 2024).

⁷⁴ See *988 Report and Order*, at 35 FCC Rcd 7415-16, paras. 73-74; *Text to 988 Second Report and Order*, 36 FCC Rcd at 16934-35, para. 56.

⁷⁵ See *988 Report and Order*, at 35 FCC Rcd 7416, para. 74; *Text to 988 Second Report and Order*, 36 FCC Rcd at 16934-35, para. 56.

terminating functions that need to be performed by the Lifeline Administrator and its service providers will be deployed at the same time, and if not, when the two ends of the georouting solution in question will be in sync. We ask that commenters identify any technical, financial, operational, legal, or other factors that may influence the timeframe for deploying a particular solution. We also ask commenters to detail whether a particular georouting solution will be deployed immediately on a national basis or on an incremental basis (e.g., market-by-market), and in the case of the latter, the timeline for rolling out the solution to all states and territories.

27. *Alternative Georouting Solutions.* We seek comment on any alternative georouting solutions. We remind commenters, as noted above, that the United States continues to face a mental health crisis and reiterate our belief that implementing a georouting solution without delay to connect callers to 988 with geographically appropriate crisis call centers provides better care to those in crisis. Nevertheless, we seek comment on alternative georouting solutions that could be implemented by wireless carriers, including any concepts that have not yet been tested or developed. Are there solutions that build off the proof of concept or other proposals referenced herein that have not yet been presented to SAMHSA or the Lifeline Administrator? Are there ways to leverage existing routing technologies for 988 that have not been considered? If so, what are the functional steps and technical specifications for such solutions? Would it be more effective and efficient for a standards body, such as the Alliance for Telecommunications Industry Solutions, to examine the options for a georouting solution for the 988 Lifeline and issue standards that could be applied by wireless carriers? Should the work from other standards bodies, in addition to or in place of the Internet Engineering Task Force and Alliance for Telecommunications Industry Solutions, be used to support georouting? Would that expedite or slow the deployment of a solution? Would any delay resulting from review by a standards body be warranted if it resulted in a more broadly adopted standard? Rather than relying on the wireless industry to produce a standard, would it be more effective for the Lifeline Administrator and/or its service providers to produce written technical specifications for a georouting solution that SAMHSA has deemed acceptable for the 988 Lifeline, i.e., have the Lifeline Administrator specify the routing information that must be transmitted with calls terminated to the 988 Lifeline and the way it needs to receive that information, and let the wireless carriers figure out how to comply? What information would need to be included in those technical specifications for wireless carriers to be able to develop a georouting solution that is compatible with the requirements set forth by the Lifeline Administrator?

28. *Form of Rules.* We seek comment on whether rules requiring wireless carriers to implement a georouting solution for the 988 Lifeline should specify one or more technical solutions that must be used or more generally require wireless carriers to implement a georouting solution within a certain period of time of the Lifeline Administrator announcing that it is: (a) prepared to implement the terminating function of one or more georouting solutions; and (b) able to provide technical specifications needed by wireless carriers to implement the originating functions. We seek comment on the merits of these two approaches or whether rules adopted by the Commission should take a different form.

29. We also seek comment on the interplay between a rule requiring wireless carriers to implement a georouting solution for the 988 Lifeline and the Commission's existing rules. Would our existing rules need to be modified, and if so how? For example, while the Commission's rules require originating service providers to route calls to the 988 Lifeline's current toll free access number,⁷⁶ would a particular georouting solution require us to modify our rules to allow calls to be routed directly to the Lifeline's individual crisis call centers?⁷⁷ We observe that the Commission's 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,

⁷⁶ 47 CFR § 52.200(b).

⁷⁷ See, e.g., Intrado, 988 Geolocation Forum Presentation at 104 (May 24, 2022), <https://www.fcc.gov/sites/default/files/988-forum-event-05242022-presentation.pdf> (proposing a cell-based routing solution to connect calls to the 988 Lifeline with local crisis call centers irrespective of a wireless phone's area code).

1-800-273-8255 (TALK).⁷⁸ Would a rule change be necessary for us to require wireless carriers to implement a georouting solution?

30. *Non-Wireless Calls.* As explained above, this *Second Further Notice of Proposed Rulemaking* focuses on georouting solutions for wireless calls to the 988 Lifeline because of the established scenarios in which a caller's location may differ from the area code associated with the wireless phone, and the fact that the majority of calls placed to the 988 Lifeline are from wireless devices. We nevertheless invite comment on whether the 988 Lifeline's current method of routing calls by area code creates challenges for callers using other technologies, including but not limited to different variations of Voice over Internet-Protocol (VoIP) technology.⁷⁹ If so, have any georouting solutions been proposed for such calls? Are any unique challenges presented by the relevant technologies? We ask that commenters responding to this inquiry provide the same information and documents requested herein with respect to georouting solutions for wireless calls.

31. *Texts to 988.* Texting is an important mode of communication to the 988 Lifeline⁸⁰ and has increasingly become the preferred means of communicating among certain demographic groups, many of whom are at risk for mental health crises.⁸¹ Pursuant to the Commission's rules, texts are required to be routed to the 988 Lifeline's ten-digit toll free access number like voice calls.⁸² We seek comment on the impact of the georouting solutions discussed above on texting to 988 and whether additional improvements are needed to route texts to geographically appropriate 988 crisis centers. In general, what are the challenges for implementing a georouting solution for texts to 988 and how do wireless carriers and other stakeholders propose to address those challenges? Would all technologies used to send texts be compatible with a particular georouting solution? What are the costs of implementing a georouting solution for texts to the 988 Lifeline, including any network infrastructure or system changes or upgrades necessary to implement a solution? What are the benefits of implementing a georouting solution for texts, and do they outweigh the costs? How long would it take to develop and deploy a georouting solution for texts? We ask that commenters responding to these inquiries provide the same technical, logistical, operational, economic, and practical information requested above for the georouting of voice calls to 988, and identify any relevant considerations that are unique to georouting texts, as opposed to calls, to 988.

⁷⁸ *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, 37 FCC Rcd 6060 (WCB 2022).

⁷⁹ The Commission adopted rules requiring all covered providers, including interconnected VoIP providers and one-way VoIP providers, to make any network changes necessary "to implement the designation of the 988 dialing code by July 16, 2022." 47 CFR § 52.200(d), (e). One-way VoIP differs from interconnected VoIP in that one-way VoIP permits users generally to receive calls that originate on the public switched telephone network *or* to terminate calls to the public switched telephone network. See 47 CFR § 52.200(e)(2) (defining "one-way VoIP" for purposes of the 988 rules) (emphasis added); 47 CFR § 9.3 (defining interconnected VoIP).

⁸⁰ *Text to 988 Second Report and Order*, 36 FCC Rcd at 16901-16902, para. 1 & n.5.

⁸¹ See, e.g., Kayla N. Anderson et al., *Emergency Department Visits Involving Mental Health Conditions, Suicide-Related Behaviors, and Drug Overdoses Among Adolescents – United States, January 2019 – February 2023*, 72 Ctrs. for Disease Control and Prevention Morbidity and Mortality Wkly. Rpt. 502 (May 12, 2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7219a1-H.pdf> (noting that the "U.S. adolescent mental and behavioral health crisis is ongoing" and that "poor mental and behavioral health remains a substantial public health problem, particularly among adolescent females"); Centers for Disease Control and Prevention, *Disparities in Suicide* (May 9, 2023), <https://www.cdc.gov/suicide/facts/disparities-in-suicide.html> (noting that suicide rates for youth and young adults ages 10-24 increased 52.2% between 2000 and 2021).

⁸² *Text to 988 Second Report and Order* at 16921, para. 34; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, DA 22-519 (WCB May 11, 2022).

C. Legal Authority

32. We tentatively conclude that we have the authority to adopt rules requiring wireless carriers to implement one or more georouting solutions for calls to the 988 Lifeline under Title II and Title III of the Communications Act of 1934, as amended (Act), and section 104 of the Twenty-First Century Communications and Video Accessibility Act (CVAA), and we seek comment on this proposal.⁸³ In particular, we seek comment on whether and to what extent the Commission's Title III authority over wireless carriers confers authority for what we propose and seek comment on in this *Second Further Notice of Proposed Rulemaking*, including sections 301,⁸⁴ 303,⁸⁵ 307,⁸⁶ 309,⁸⁷ and 316.⁸⁸ As the Supreme Court has long recognized, Title III grants the Commission a "comprehensive mandate" regarding regulation of spectrum usage, and courts have routinely found that Title III provides the Commission with "broad authority to manage spectrum . . . in the public interest."⁸⁹ As we explain above, we believe that requiring wireless carriers to implement a georouting solution for the 988 Lifeline will confer significant public interest benefits by connecting those experiencing a mental health crisis with local public safety and counseling resources that could save lives. We seek comment on this assessment.

33. We also seek comment on whether and to what extent our numbering authority under section 251(e) of the Act provides a source of authority for what we propose and seek comment on in this *Second Further Notice of Proposed Rulemaking*.⁹⁰ Section 251(e)(1) gives the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."⁹¹ The Commission's exclusive jurisdiction over numbering policy enables the Commission to act flexibly and expeditiously on important numbering matters,⁹² which pursuant to section 251(e)(4) of the Act, includes the designation of 988 as the universal telephone number for the 988 Lifeline.⁹³ We seek comment on whether this authority would extend to adopting rules requiring wireless carriers to route

⁸³ 47 U.S.C. §§ 201, 218, 251(e), 301, 303, 307, 309, 316, and 332; Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 § 104 (2010) (codified at 47 U.S.C. §§ 617, 618, and 619).

⁸⁴ 47 U.S.C. § 301 ("It is the purpose of this [Act], among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority.").

⁸⁵ 47 U.S.C. § 303(b) (authorizing the FCC to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class"); 47 U.S.C. § 303(g) (the Commission shall "encourage the larger and more effective use of radio in the public interest"); 47 U.S.C. § 303(r) (the Commission may "prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this [Act]").

⁸⁶ 47 U.S.C. § 307 (authorizing the FCC to grant station licenses).

⁸⁷ 47 U.S.C. § 309(a) (authorizing the Commission, in acting on certain license applications, to determine "whether the public interest, convenience, and necessity will be served by granting such application").

⁸⁸ 47 U.S.C. § 316(a) (authorizing the FCC to modify existing licenses to impose new license conditions if, in the judgment of the Commission, such action will promote the public interest, convenience and necessity).

⁸⁹ See *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943); see also *Cellco Partnership v. FCC*, 700 F.3d 534, 537 (D.C. Cir. 2012) (upholding the FCC's authority to rely on Title III provisions to impose data roaming rules).

⁹⁰ 47 U.S.C. § 251(e).

⁹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-98 et al., Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996).

⁹² *Id.*

⁹³ 47 U.S.C. § 251(e).

calls to the 988 Lifeline in a manner that would help to ensure that all Americans can receive efficient, swift access to, and reap the benefits of, critical suicide prevention and crisis services offered through the 988 Lifeline.

34. We seek comment on any other sources of authority that would authorize the Commission to require wireless carriers to implement a georouting solution for calls to the 988 Lifeline, including whether the Commission could invoke its ancillary authority. To exercise ancillary jurisdiction “two conditions [must be] satisfied: (1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”⁹⁴ Routing calls to the 988 Lifeline involves communications by wire or radio and the use of equipment for purposes of facilitating transmission by wire or radio.⁹⁵ We believe that requiring the use of a georouting solution for the 988 Lifeline is necessary to carry out our responsibility for the proper functioning of the 988 Lifeline services under section 251(e)(4),⁹⁶ and seek comment on whether doing so falls within the scope of the Commission’s ancillary authority.

35. *Digital Equity.* The Commission, as part of its continuing effort to advance digital equity for all,⁹⁷ 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 considerations⁹⁸ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our

⁹⁴ *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *Am. Library Assn. v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)); 47 U.S.C. § 154(i) (“The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”).

⁹⁵ 47 U.S.C. § 153(4) (radio communication “means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission” (emphasis added)). Our focus is on the use of equipment specifically for purposes of enabling transmission of wire or radio communications, which is distinguishable from the facts of *Am. Library Ass’n*. See *Am. Library Ass’n*, 406 F.3d at 700 (holding that “the agency’s general jurisdictional grant does not encompass the regulation of consumer electronics products that can be used for receipt of wire or radio communications when those devices are not engaged in the process of radio or wire transmission”). The Commission previously found that imposing outage reporting requirements on covered 988 service providers was reasonably ancillary to our responsibility to ensure that the 988 Lifeline operates effectively. *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline, Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Implementation of the National Suicide Hotline Improvement Act of 2018*, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, Report and Order, FCC 23-57, at 30, para. 51 (adopted July 20, 2023).

⁹⁶ 47 U.S.C. § 251(e)(4).

⁹⁷ 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.

⁹⁸ 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).

proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

36. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁹⁹ 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).¹⁰⁰ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

37. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁰¹ 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 commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁰²

38. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, when FCC Headquarters reopens

⁹⁹ 47 CFR § 1.1200(a).

¹⁰⁰ 47 CFR § 1.1206(b).

¹⁰¹ 47 CFR §§ 1.415, 1.419.

¹⁰² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

to the public.

39. *Confidentiality.* Some information and materials requested by this *Second 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.¹⁰³

40. *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), (202) 418-0432 (TTY).

41. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁰⁴ 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."¹⁰⁵ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the potential rule and policy changes contained in this *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix A. The Commission invites the general public, particularly small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Second 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.

42. *Paperwork Reduction Act.* This document may contain proposed 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 any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

43. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

44. *Contact Person.* For additional information on this proceeding, contact Merry Wulff, Wireline Competition Bureau, Competition Policy Division, at Merry.Wulff@fcc.gov or (202) 418-1084.

V. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 403, that this *Second Further Notice of Proposed Rulemaking* IS ADOPTED.

46. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on the *Second Further Notice of Proposed Rulemaking* on or before 30 days following publication in the Federal Register, and reply comments on or before 60 days following publication in the Federal Register.

¹⁰³ 47 CFR § 0.459.

¹⁰⁴ *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).

¹⁰⁵ *Id.*

47. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

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 small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking (Second FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *Second FNPRM* seeks to facilitate access to critical suicide prevention and crisis services by improving routing of wireless calls to the 988 Suicide & Crisis Lifeline (988 Lifeline). The 988 Lifeline is currently designed to route wireless calls to crisis centers based on a caller's area code and exchange.⁴ As a result, however, the 988 Lifeline may not route a wireless call to a crisis center nearest to the caller's physical location. This is particularly concerning given the increased prevalence of calls to the 988 Lifeline originating from wireless phones⁵ and the importance of providing help-seekers access to local resources.⁶

3. The *Second FNPRM* proposes to adopt a rule that would require wireless carriers to implement one or more georouting solutions for calls to the 988 Lifeline, and seeks comment to thoroughly and transparently consider georouting solutions that could fall within the scope of that mandate and to identify any remaining work to implement a georouting solution. The *Second FNPRM* seeks comment on whether mandating the use of one or more georouting solutions by wireless carriers originating calls to the 988 Lifeline will achieve the benefits of enhancing access to critical support and resources. The *Second FNPRM* inquires about the viability of any potential georouting solutions proposed to date, including those proposed to SAMHSA and the Lifeline Administrator, and also seeks comment on any alternative georouting solutions. The Commission believes that a georouting solution based on cell tower information would best identify a caller's location and thus enable routing the call to a geographically appropriate crisis call center. The *Second FNPRM* seeks comment on this belief and on any other alternatives for identifying a caller's location and correlating that location with a geographically

¹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

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 Apr. 22, 2024).

⁵ The Lifeline Administrator estimates that 80% of calls placed to the 988 Lifeline are from wireless phones. Vibrant 988 Geolocation Comments at 2.

⁶ According to mental health and crisis counseling experts, local crisis call center counselors are more knowledgeable about available local resources and are more well-suited to respond to unique community stressors and regional cultural and economic factors. *See e.g.*, American Association of Suicidology Comments at 2-3; American Foundation for Suicide Prevention 988 Geolocation Comments at 1; BRETSA 988 Geolocation Comments at 17; Crisis Response Network 988 Geolocation Comments at 1; Mental Health America 988 Geolocation Comments at 1; Vibrant 988 Geolocation Comments at 3; NAMI 988 Geolocation Comments at 2.

appropriate crisis call center. The *Second FNPRM* also seeks comment on the geographic boundaries used for any proposed georouting solution and asks whether the Commission should mandate the use of one or more particular geographic boundaries. For any georouting solutions, the *Second FNPRM* inquires about the technical specifications and limitations, required routing data and transmission methods, necessary infrastructure and system changes or upgrades, testing requirements, costs and benefits, and timelines for deployment. Additionally, the *Second FNPRM* seeks comment on any routing challenges and potential georouting solutions for non-wireless calls. The *Second FNPRM* also seeks comment on the impact of georouting solutions on texting to the 988 Lifeline and asks whether additional improvements are needed to route texts to geographically appropriate 988 crisis centers. Lastly, the *Second FNPRM* requests comment on the form of rules requiring wireless carriers to implement a georouting solution for the 988 Lifeline and on the Commission's authority to adopt such rules.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this *Second FNPRM* is contained in sections 1, 4(i), 4(j), 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 403 of the Communications Act of 1934, as amended.⁷

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the *Second FNPRM* seeks comment, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.¹⁰ A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁴

⁷ 47 U.S.C. §§ 151, 154(i), 154(j), 201, 218, 251(e), 301, 303, 307, 309(a), 316, 332, and 403.

⁸ *Id.* at § 603(b)(3).

⁹ *Id.* at § 601(6).

¹⁰ *Id.* at § 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."

¹¹ See 15 U.S.C. § 632.

¹² 5 U.S.C. § 601(3)-(6).

¹³ See SBA, Office of Advocacy, "What's New With Small Business?," <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁴ *Id.*

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.”¹⁵ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁶ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁷

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.”¹⁸ U.S. Census Bureau data from the 2022 Census of Governments¹⁹ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number, there were 36,845 general purpose governments (county,²¹ municipal, and town or township²²) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²³) with enrollment

¹⁵ 5 U.S.C. § 601(4).

¹⁶ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁷ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 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).

¹⁸ 5 U.S.C. § 601(5).

¹⁹ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

²⁰ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [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.

²¹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/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.

²² See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²³ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 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.

populations of less than 50,000.²⁴ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²⁵

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁶ 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.²⁷ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁸ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁹

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³¹ Of this number, 2,964 firms operated with fewer than 250 employees.³² 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.³³ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁴ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities

²⁴ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁵ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 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.

³⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³¹ 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>.

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 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>.

³⁴ *Id.*

11. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³⁵ is the closest industry with an SBA small business size standard.³⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.⁴¹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴³ is the closest industry with an SBA small business size standard.⁴⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring

³⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁷ 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.

³⁸ *Id.*

³⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴² *Id.*

⁴³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁵ *Id.*

⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁸ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

13. *Competitive Local Exchange Carriers (Competitive 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.⁵⁰ Wired Telecommunications Carriers⁵¹ 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.⁵² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵³ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.⁵⁵ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁷ is the closest industry with a SBA small business size standard.⁵⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁹ *Id.*

⁵⁰ 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.

⁵¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁹ *Id.*

for the entire year.⁶⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁶¹ 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.⁶² Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁶³ 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.⁶⁴ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁵ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁶ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁷ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁸ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁹ 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.⁷⁰ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁷¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business

⁶⁰ 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>.

⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶³ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁸ 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>.

⁶⁹ *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.

⁷⁰ 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>.

⁷¹ *Id.*

size standard specifically for Toll Resellers. Telecommunications Resellers⁷² 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.⁷³ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁶ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁷ 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.⁷⁸ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *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 Carriers⁸⁰ is the closest industry with a SBA small business size standard.⁸¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸³ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were

⁷² See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁶ 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>.

⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁹ *Id.*

⁸⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸² *Id.*

⁸³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁸⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

90 providers that reported they were engaged in the provision of other toll services.⁸⁵ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with a SBA small business size standard applicable to these service providers.⁸⁷ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁸⁹ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁰ 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.⁹¹ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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.⁹³ Wireless Telecommunications Carriers (*except Satellite*)⁹⁴ is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁶ Of this number, 2,837 firms employed fewer than 250

⁸⁵ 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>.

⁸⁶ *Id.*

⁸⁷ 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>.

⁸⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁹ 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>.

⁹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹² *Id.*

⁹³ See 47 CFR §§ 27.1 – 27.1607.

⁹⁴ 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>.

⁹⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁶ 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>.

employees.⁹⁷ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. 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.⁹⁸

21. 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.

22. *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).⁹⁹ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹⁰⁰ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹⁰¹ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰² 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.¹⁰³ Of these providers, the Commission estimates that 255 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.

23. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

⁹⁷ *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.

⁹⁸ 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.

⁹⁹ 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>.

¹⁰⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰¹ 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>.

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.*

communications via the airwaves.¹⁰⁵ 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.¹⁰⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁰⁸ Of that number, 2,837 firms employed fewer than 250 employees.¹⁰⁹ 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.¹¹⁰ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹¹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *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.¹¹² 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.¹¹³ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹¹⁴ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹¹⁵ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹¹⁶ 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.¹¹⁷ Based on this data, the

¹⁰⁵ 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>.

¹⁰⁶ *Id.*

¹⁰⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁸ 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>.

¹⁰⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁰ 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>.

¹¹¹ *Id.*

¹¹² 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>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹¹⁶ 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: EC1700SIZEREVFIEM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIEM&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).

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. 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).

(continued....)

Commission estimates that a majority of firms in the industry are small.

25. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹¹⁸ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁹ Of these, only seven have more than 400,000 subscribers.¹²⁰ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹²¹ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹²² Of these, about 639 have more than 15,000 subscribers.¹²³ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

26. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹²⁴ 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.¹²⁵ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹²⁶ 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.¹²⁷ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

27. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in

(Continued from previous page) _____

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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

¹¹⁸ 47 CFR § 76.901(d).

¹¹⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹²⁰ 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).

¹²¹ 47 CFR § 76.901(c).

¹²² S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹²³ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

¹²⁴ 47 U.S.C. § 543(m)(2).

¹²⁵ *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).

¹²⁶ 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).

¹²⁷ 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).

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.”¹²⁸ 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.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.

28. *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.¹³⁴ 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.¹³⁵ 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.¹³⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹³⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹³⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹³⁹ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be

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>.

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, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹³⁸ 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>.

¹³⁹ *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.

considered small.

29. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹⁴⁰ 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.¹⁴¹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹⁴² U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹⁴³ Of this number, 624 firms had fewer than 250 employees.¹⁴⁴ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

30. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.¹⁴⁵ Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.¹⁴⁶ The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small.¹⁴⁷ U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.¹⁴⁸ Of this total, 673 firms operated with fewer than 250 employees.¹⁴⁹ Thus under the SBA size standard, the majority of firms in this industry can be considered small.

31. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.¹⁵⁰ Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing

¹⁴⁰ 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>.

¹⁴¹ *Id.*

¹⁴² See 13 CFR § 121.201, NAICS Code 334220.

¹⁴³ 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>.

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.

¹⁴⁵ 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>.

¹⁴⁶ *Id.*

¹⁴⁷ See 13 CFR § 121.201, NAICS Code 334413.

¹⁴⁸ 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 334413, <https://data.census.gov/cedsci/table?y=2017&n=334413&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

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.

¹⁵⁰ See U.S. Census Bureau, 2017 NAICS Definition, “511210 Software Publishers,” <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

documentation, assisting in installation, and providing support services to software purchasers.¹⁵¹ These establishments may design, develop, and publish, or publish only.¹⁵² The SBA small business size standard for this industry classifies businesses having annual receipts of \$41.5 million or less as small.¹⁵³ U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.¹⁵⁴ Of this number 7,226 firms had revenue of less than \$25 million.¹⁵⁵ Based on this data, we conclude that a majority of firms in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. The RFA requires federal agencies to describe the impact of proposed rules on small entities. The *Second FNPRM* proposes to adopt a rule that would require small and other wireless carriers to implement one or more georouting solutions for calls to the 988 Lifeline. The Commission believes that a georouting solution based on cell tower information would best identify a caller's location to enable routing to a geographically appropriate crisis call center and seeks comment on this conclusion. The *Second FNPRM* seeks comment on whether the Commission should mandate the use of one or more particular geographic boundaries. The *Second FNPRM* also seeks comment on routing challenges and potential georouting solutions for non-wireless calls and asks whether additional improvements are needed to route texts to geographically appropriate 988 crisis centers. Additionally, the *Second FNPRM* seeks comment on a number of aspects related to implementing any georouting solutions, including technical specifications and limitations, required routing data and transmission methods, necessary infrastructure and system changes or upgrades, testing requirements, timelines for deployment, and the Commission expects that small entities will incur costs to implement these changes. At this time the Commission does not have sufficient cost information to quantify compliance costs for small entities. However, we expect the comments received in response to the *Second FNPRM* to include information which should help the Commission further analyze the economic impact of various proposals on small entities, including but not limited to costs for professional services, before adopting final rules.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁵⁶

34. In the *Second FNPRM*, the Commission seeks comment from all entities, including small

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See 13 CFR § 121.201, NAICS Code 511210 (as of 10/1/22 NAICS Code 513210).

¹⁵⁴ 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>.

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. 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.

¹⁵⁶ 5 U.S.C. § 603(c)(1)-(4).

entities, on the effect of deploying a georouting solution for wireless calls to the 988 Lifeline, and on alternative ways of implementing a georouting solution, including concepts that have yet to be tested or developed. For example, the *Second FNPRM* seeks comment on the costs and benefits of deploying a georouting solution for wireless calls to the 988 Lifeline. This includes whether rules requiring wireless carriers to implement a georouting solution for the 988 Lifeline should specify one or more technical solutions that must be used or more generally require wireless carriers to implement a georouting solution within a certain period of time of the Lifeline Administrator announcing that it is: (a) prepared to implement the terminating function of one or more georouting solutions; and (b) able to provide technical specifications needed by wireless carriers to implement the originating functions. Additionally, the *Second FNPRM* invites stakeholders to comment on whether georouting solutions that have been developed to date by major carriers would be viable for smaller carriers, and any distinctions that need to be considered for smaller carriers when mandating the use of a georouting solution for the 988 Lifeline. The *Second FNPRM* also inquires whether there are any ways to minimize costs incurred for network or system changes or upgrades, particularly for small providers. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the alternatives proposed in the *Second FNPRM*. We expect to take into account the economic impact on small entities, as identified in comments filed in response to the *Second FNPRM* and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Implementation of the National Suicide Hotline Act of 2018*, Second Further Notice of Proposed Rulemaking, WC Docket No. 18-336 (Apr. 25, 2024).

Not far from us here at the Federal Communications Commission, in a non-descript, low-slung building in Montgomery County, Maryland is an organization called EveryMind. They are one of over 200 call centers across the country that respond when people dial 988—the Suicide and Crisis Lifeline.

At the FCC, we know 988 well. We helped set up this easy-to-remember, three-digit number nationwide. We made it possible for anyone, anywhere to reach out for help with this number through call, chat, or text. But those are the technical details. Because at this agency we don't really know what it is like to be on the receiving end of these calls. The people at EveryMind do.

Along with Commissioner Gomez, I visited EveryMind to learn more about what responding to 988 looks like on the ground. After spending time with EveryMind, two things were clear. First, the people answering these calls are extraordinary. They listen and respond thoughtfully and carefully to everyone who reaches out in crisis. The work they do saves lives. Second, the people answering these calls face challenges because connecting those who reach out to 988 to nearby help is complicated.

Today, 80 percent of the calls to 988 originate from a wireless phone. Right now those calls are routed based on the area code associated with that device. But for many people the area code on our 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 you would still be routed to a center in Maryland like EveryMind. The people at EveryMind will do everything they can to assist you, but it goes without saying that they know more about how to get you assistance in their own backyard than they do across the country in California.

I think it's time to change this. If we do, I think we can save more lives by getting more people connected to resources nearby. That is why today we propose to introduce georouting. When georouting is used, wireless calls to 988 are routed to call centers based on the nearby towers that wireless calls use to connect. This provides a more accurate picture of a caller's actual location, while still protecting their privacy. More importantly, georouting means those responding to 988 inquiries have a lot more knowledge of local resources and are better equipped to assist the caller with getting the help they need.

On this front, we are already on the right track. Last year, I wrote to the nationwide wireless providers urging them to begin work on georouting. So I want to thank them for the headway they have made to date with development, testing, and trial efforts. I also want to make clear that for georouting to work with 988 across the country, the Department of Health and Human Services and its administrator of the 988 Suicide and Crisis Lifeline will need to incorporate the solutions we are proposing here directly into its process. This is vital. We stand ready to assist because as we develop these technical solutions, we know we benefit from having experts in mental health work with us every step of the way.

I want to thank Representative Cárdenas, Senator Padilla, Senator Tillis, and Secretary Becerra for joining me last month when I first publicly introduced the idea of requiring georouting for 988. I also want to thank the counselors of EveryMind, and Ann Mazur, who leads their efforts, for being here today, for the gracious way they opened their doors to us, and for the services they provide to people in their community. They are heroes in our own backyard.

In addition, thank you to the staff responsible for this rulemaking, including Callie Coker, Elizabeth Drogula, Trent Harkrader, Heather Hendrickson, Jodie May, Kiara Ortiz, Christi Shewman, and Merry Wulff from the Wireline Competition Bureau; Brenda Boykin, Ken Carlberg, John Evanoff, David Furth, Austin Randazzo, Rasoul Safavian, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Thomas Derenge, Garnet Hanly, Eli Johnson, Roger Noel, Susannah Larson, and John Lockwood from the Wireless Telecommunications Bureau; Terry Cavanaugh, Richard Mallen, Erika

Olsen, David Senzel, and Chin Yoo from the Office of General Counsel; Pramesh Jobanputra, Stacy Jordan, and Eric Ralph from the Office of Economics and Analytics; and Jocelyn James, Joy Ragsdale, Jamie Saloom, and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Implementation of the National Suicide Hotline Act of 2018*, Second Further Notice of Proposed Rulemaking, WC Docket No. 18-336 (Apr. 25, 2024).

A year ago, in Sioux Falls, South Dakota, I had the opportunity to visit the Helpline Center—an organization that provides mental and behavioral health services and that answers over 100,000 calls to 988 every year. That’s where I had the chance to meet Janet, one of the Helpline’s counselors. She is someone that makes a difference in people’s lives every day she goes to work.

One of the points that Janet and her talented colleagues conveyed to me during the visit was the difference that 988 has been making since the FCC helped stand it up just a short while ago. She noted in particular that this easy to remember number has resulted in people reaching out for help earlier in the lifecycle of a crisis and how that has enabled them to offer even more effective help in many cases. In fact they estimate that since 988 has been rolled out, they’ve seen about a 200% increase in the number of calls and texts coming in to the call center.

But they also thought there was more the FCC could do to improve the 988 system. In particular, they flagged call routing. With mobile phones and number portability, people don’t always call 988 from the geographic area associated with their area code. That means that someone reaching out for help in South Dakota could have their call routed to a helpline center located somewhere else in the country. That can make a difference in at least some cases in terms of the ability of call takers to connect with callers and provide relevant support and information. There has to be a way to route those calls to the local helpline while continuing to protect the privacy of callers and not discourage people from reaching out.

That is exactly the idea we put forward today. So I want to thank Chairwoman Rosenworcel for her leadership and work on this issue. I am glad that the item seeks comment from all stakeholders on ways we can identify solutions - this way we can ensure the rules that the Commission develops are practical and achievable to implement. I want to also recognize Senators Barrasso and Luján for their leadership and efforts to advance their bipartisan “988 Lifeline Location Improvement Act.” This legislation would ensure the FCC is in a strong position to ensure Americans have access to this vital resource when they need it most. And, finally, I want to thank the staff of the Wireline Competition Bureau for their work on these important issues. The item has my support.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Implementation of the National Suicide Hotline Act of 2018*, Second Further Notice of Proposed Rulemaking, WC Docket No. 18-336 (Apr. 25, 2024).

“Government process” isn’t always synonymous with “speed.” It’s true. From seeking public comment, to building consensus amongst industry, advocates, and sister agencies, these proceedings take time. But sometimes, all the pieces align, and we are able to deliver critical results for the American people with real speed. This is just one of the reasons I am so proud of the Commission’s role in designating 988 as the three-digit code for the Suicide & Crisis Lifeline.

Since the nationwide transition to 988 in July 2022, the Lifeline has received and routed 9.6 million calls, texts, and chats.²⁶² I call that success. Now, our primary responsibility at the FCC is to ensure meaningful access to the Lifeline. We’ve done this by setting forth reliability, resiliency, and outage reporting requirements. And today we continue to do so by following the counsel of mental health advocates and proposing to require a georouting solution for 988. Currently, when a caller dials 988, the call is routed to a crisis center based on the caller’s area code and exchange. (In the event that a center is unable to answer, the call is routed to the Lifeline’s national backup network.) But in a world where the majority of calls placed to the Lifeline are made from wireless phones – the Lifeline Administrator estimates as many as 80 percent of calls placed – and where the area code of a mobile phone frequently doesn’t correspond to the location of the caller, this presents a discrepancy. Mental health and crisis counseling experts advise that connecting callers in crisis with local crisis centers is vitally important. Not only does it ensure that callers have access to nearby public health and safety resources, but local counselors may be more familiar with cultural issues or community stressors in the caller’s area.

Recognizing this, this past summer, the Substance Abuse and Mental Health Services Administration (SAMHSA), the Lifeline Administrator, and other industry partners successfully completed a proof of concept trial of a potential solution for routing wireless calls to geographically appropriate crisis centers. Today, we propose to adopt rules requiring wireless carriers to implement such a solution. This will require cooperation between the wireless carriers originating calls and the Lifeline Administrator that controls the call routing platform. But given the many examples we have of these parties – and others – working together quickly and well for all our benefit, I expect them to do so again here.

I want to thank the Commission staff who worked on this item, and who are a big part of the reason why we’ve been able to move so promptly in our 988 proceedings. This NPRM has my full support.

²⁶² SAMHSA, 988 Lifeline Performance Metrics, <https://www.samhsa.gov/find-help/988/performance-metrics> (last visited Apr. 24, 2024).

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *Implementation of the National Suicide Hotline Act of 2018*, Second Further Notice of Proposed Rulemaking, WC Docket No. 18-336 (Apr. 25, 2024).

My first-ever site visit as FCC Commissioner was to meet the amazing team at EveryMind in Rockville, Maryland. Thank you for hosting us, Ms. Mazur. I walked away that day with a fuller appreciation for the importance of making the 988 Lifeline available to the public and gratitude for the hundreds of volunteer centers and staff that provide support to callers across the country.

As the 988 Lifeline has become available, we have learned about ways to improve support for callers. Today, we take a step towards such an improvement. With this Second Further Notice of Proposed Rulemaking, we continue exploring the georouting solutions to connect a caller in crisis to a call center and resources in the place where they are. Doing everything we can to ensure that individuals experiencing a crisis can receive the support they need saves lives and is simply good policy. I look forward to seeing the record develop with solutions and ideas about how we can implement this important next step.

Thank you to the staff of the Wireline Competition Bureau for your valuable work on this item.

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

In the Matter of	)	
	)	File Nos.: EB-FIELDNER-23-00035354
Jean Marius	)	EB-FIELDNER-20-00031201
Randolph, Massachusetts	)	EB-FIELDNER-23-00035460
	)	NAL/Acct. No.: 202432010005
	)	FRN: 0014271175

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024**Released: April 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$597,775 against Jean Marius (Marius) for operating an unauthorized radio station, known as “Radio Tele Planet Compas”, on 105.3 MHz (Station) in Brockton, Massachusetts, on June 6 and July 12, 2023; on 89.3 MHz in Mattapan, Massachusetts, on June 7 and July 12, 2023; and on 105.3 MHz in Randolph, Massachusetts, on June 21, 2023, by which Marius apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting, resulting in five apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND**A. Legal Framework**

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. *See* 47 U.S.C. § 511.

inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Marius has been directly involved in the operation of the Station for years.⁷ The Bureau first became aware of Marius’s Station on October 19, 2004, when field agents (Agents) from the FCC’s Boston Field Office (Boston Office), traced the source of radio transmissions on 89.3 MHz to a residence in Randolph, Massachusetts.⁸ The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules.⁹ During an inspection of the Station, Marius admitted to the Agents that he was the owner and operator of the transmitting equipment operating on 89.3 MHz.¹⁰ Marius received verbal and written warnings to cease operation of his pirate radio station¹¹ but failed to do so. Agents again found the Station operating on 89.3 MHz over the part 15 power limits at the same location on April 20, 2005.¹² As a result, Marius was issued a Notice of Apparent Liability for Forfeiture (2005 NAL) for \$10,000 on November 17, 2005. Marius did not respond to the 2005 NAL, which was later affirmed in a 2006 Forfeiture Order.¹³

4. Based on a July 2017 complaint, Agents from the Boston Office on August 18 and November 15, 2017, traced the source of radio transmissions on 89.3 MHz to { [REDACTED] } Tucker Terrace, Randolph, Massachusetts (Randolph Site).¹⁴ On both dates, Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules. Agents interviewed Marius on August 18, 2017, during which he admitted to

⁴ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter (“µV/m”) at 3 meters).

⁷ According to a graphic on the Station’s website, it has been operating since 2002. See Radio Tele Planet Compas, <https://planetcompas.com/wp-content/uploads/2023/03/wicast-2023.jpg> (last visited Feb. 2, 2024).

⁸ See *Jean Harold Marius, Randolph, MA*, Notice of Apparent Liability for Forfeiture, para. 2 (Northeast Region, EB Apr. 20 2005), <https://docs.fcc.gov/public/attachments/DOC-263484A1.pdf>.

⁹ See *id.* at n.2.

¹⁰ See *id.* at para. 3 (citing 47 CFR §15.209(a)).

¹¹ See *id.* at paras. 3-4

¹² See *id.* at para. 5.

¹³ See *Jean Harold Marius, Randolph, MA*, Forfeiture Order, 21 FCC Rcd 1897, para. 2 (Northeast Region, EB 2006).

¹⁴ Material set off by double brackets { [] } is confidential and is redacted from the public version of this document.

operating the Station. Agents issued on-scene Notices of Unlicensed Operation on August 17 and November 15, 2017, which Marius signed and accepted.¹⁵

2. PIRATE Act Investigation

5. On June 6, 2023, and July 12, 2023, Agents from the Boston Office traced the source of radio transmissions on 105.3 MHz to {█} Oakdale Street, Brockton, Massachusetts (Brockton Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.¹⁶ The Agents listened to and recorded the audio programming on 105.3 MHz on both days. During the June 6 broadcast, Agents observed that the on-air broadcast on 105.3 MHz matched the streaming audio from the Radio Tele Planet Compas website at <https://planetcompas.com>.¹⁷ A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Brockton Site on any frequency.

6. On June 7, 2023, and July 12, 2023, Agents from the Boston Office monitored the frequency 89.3 MHz in Mattapan, Massachusetts, and, using direction-finding techniques, traced the source of the signal to {█} Walk Hill Street, Mattapan, Massachusetts (Mattapan Site). On both days, Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's Rules.¹⁸ The Agents listened to and recorded the audio programming on 89.3 MHz on both days. During the July 12 broadcast, the Agents observed that the on-air broadcast on 89.3 MHz matched the streaming audio from the Radio Tele Planet Compas website at <https://planetcompas.com>.¹⁹ A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Mattapan Site on any frequency.

7. On June 21, 2023, Agents from the Boston Office monitored the frequency 105.3 MHz in Randolph, Massachusetts, and, using direction-finding techniques, traced the source of the signal to the Randolph Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's Rules.²⁰ On July 5, 2023, Agents returned to the Randolph Site and observed that the on-air broadcast on 105.3 MHz matched the streaming audio from the Radio Tele Planet Compas website at <https://planetcompas.com>.²¹ A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Randolph Site on any frequency. Investigation into the ownership of the Randolph Site revealed Marius to be the owner.²²

8. In addition, Agents searched for websites related to Radio Tele Planet Compas. The website for the Station displayed the frequency numbers of both 105.3 and 89.3 MHz.²³ It also contained

¹⁵ See *Jean Harold Marius*, Notice of Unlicensed Operation, (Boston Field Office, EB Aug., 18, 2017) (on file EB-FIELDNER-17-00024881); *Jean Marius*, Notice of Unlicensed Operation, (Boston Field Office, EB Nov., 15, 2017) (on file EB-FIELDNER-17-00024881).

¹⁶ 47 CFR § 15.239(b).

¹⁷ See Video matching internet stream from the Station's website with the over-the-air broadcast of 105.3 MHz from the Brockton Site (on file EB-FIELDNER-23-00035354).

¹⁸ 47 CFR § 15.239(b).

¹⁹ See Video matching internet stream from the Station's website with over-the-air broadcast of 89.3 MHz (on file EB-FIELDNER-20-00031201).

²⁰ 47 CFR § 15.239.

²¹ See Video matching internet stream from the Station's website with the over-the-air broadcast of 105.3 MHz from the Randolph Site (on file EB-FIELDNER-23-00035354).

²² See Randolph, MA Online Assessment Database, {█} TUCKER TR, <https://gis.vgsi.com/randolphma/{█}> (last visited Jan. 8, 2024).

²³ See Radio Tele Planet Compas, <https://planetcompas.com> (last visited Feb. 2, 2024).

images of Marius, the e-mail address { [REDACTED] }@gmail.com, and its location in Randolph, Massachusetts.²⁴ Furthermore, after a Notice of Illegal Pirate Radio Broadcasting (NIPRB)²⁵ was sent to the owners of the Brockton Site, Marius sent an e-mail to the Commission from the same e-mail address of { [REDACTED] }@gmail.com which included a screenshot attachment of the NIPRB.²⁶ In that e-mail, Marius stated:

I am writing to inform you that I, Jean Marius, have ceased operations on frequency 105.3 FM since July 2023. I received a notification from the FCC to discontinue operating my radio station on this frequency, and accordingly, I have complied with the directive. As of the date specified, *my radio station* is no longer on the air.²⁷

The e-mail was signed “Jean Harold Marius, Planetcompas.com, Radio Tele Planet Compas.”²⁸

III. DISCUSSION

9. We find that Marius, in apparent violation of section 511 of the Act,²⁹ willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 105.3 MHz on June 6, June 21 and July 12, 2023, and on 89.3 MHz on June 7 and July 12, 2023, known as “Radio Planet Tele Compas.” On each of these dates, Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission’s rules. A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Brockton, Mattapan, or Randolph Sites at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Marius is the operator of the Station,³⁰ and in his December 8, 2023 e-mail, Marius admitted that he owned the Station. Accordingly, the Commission finds that Marius’s actions on June 6, June 7, June 21, and July 12, 2023³¹, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.³²

A. Proposed Forfeiture

10. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person “who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.”³³ In exercising our forfeiture authority, we consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³⁴ We may adjust a forfeiture

²⁴ See *id.*

²⁵ See *Andre O. Jeanty and Racimene Jeanty Reme*, Notice of Illegal Pirate Radio Broadcasting, 2023 WL 8642981 (EB Dec. 1, 2023).

²⁶ E-mail from Harold Marius Mr Compas to David Dombrowski, Regional Director, Region One, FCC Enforcement Bureau (Dec. 8, 2023, 9:17:41EDT).

²⁷ *Id.* (emphasis added).

²⁸ *Id.*

²⁹ 47 U.S.C. § 511.

³⁰ See *supra* paras. 7-8.

³¹ There are two apparent violations on July 12, 2023. One violation occurred at the Brockton Site on 105.5 MHz and the other at the Mattapan Site on 89.3 MHz. See *supra* paras. 5-6.

³² 47 U.S.C. § 511(a), (h).

³³ 47 U.S.C. § 511(a).

³⁴ 47 CFR § 1.80(b)(11).

downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.³⁵

11. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.³⁶ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.³⁷

12. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.³⁸ Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,³⁹ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the five instances⁴⁰ that Marius apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$100,000.⁴¹

13. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,⁴² we conclude that significant upward adjustments are warranted. First, we find that Marius's conduct was intentional. Marius had been warned multiple times since 2004 that his conduct was illegal, including a forfeiture order issued against him,⁴³ but he nonetheless chose to continue to operate without authorization. Second, we find that an upward adjustment is warranted based on Marius's history of prior violations of the Act observed by Agents in 2004 and 2017.⁴⁴ Last, we find that Marius's broadcasting on two separate frequencies and from three different geographic areas was egregious as it significantly increased the likelihood of interference to lawfully operating stations and the potential for harm to the public if such stations needed to transmit emergency alerts. Based on the severity of the facts underlying

³⁵ *Id.*

³⁶ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

³⁷ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

³⁸ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

³⁹ The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. See *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178 (Oct. 13, 2023).

⁴⁰ The Commission has found that unauthorized operation on different frequencies at different locations on the same day are separate violations. See *Gerlens Cesar, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12734, para.12 (2019), *terminated in* Consent Decree, 35 FCC Rcd 6887 (2020). In this case, Marius had two violations on July 12, 2023—the first at the Brockton Site on 105.3 MHz and the second at the Mattapan Site on 89.3 MHz.

⁴¹ See 47 U.S.C. § 511.

⁴² See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

⁴³ See *supra* paras. 3-4.

⁴⁴ See *id.*

these factors, we propose the maximum penalty of \$119,555⁴⁵ for each of the five instances in which Marius operated his pirate radio station in 2023, for a total penalty of \$597,775.

14. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,⁴⁶ Marius is apparently liable for a proposed total monetary forfeiture of \$597,775.⁴⁷

IV. CONCLUSION

15. We have determined that Jean Marius apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023, June 7, 2023, June 21, 2023, and on two different frequencies on July 12, 2023. As such, Marius is apparently liable for a forfeiture of \$597,775.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Jean Marius is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five hundred ninety-seven thousand, seven hundred seventy-five dollars (\$597,775) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

17. **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, Jean Marius **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 20.

18. In order for Jean Marius to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Marius shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/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:⁴⁸

- 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 159⁴⁹ or printed CORES form⁵⁰

⁴⁵ 47 U.S.C. § 511(a); *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁴⁶ *See id.*

⁴⁷ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

⁴⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁴⁹ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-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 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).⁵¹ 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 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.

19. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁵² 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.

20. 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.⁵³ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

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⁵⁰ 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>.

⁵¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵² See 47 CFR § 1.1914.

⁵³ *Id.* §§ 1.16, 1.80(g)(3).

21. 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.⁵⁴ 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.⁵⁵

22. **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 Jean Marius at his last known address of {[REDACTED]} Tucker Terrace, Randolph, Massachusetts 02368-5033.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁴ 47 U.S.C. § 503(b)(2)(E).

⁵⁵ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Jean Marius, Randolph, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00035354 (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Renold David	)	File No.: EB-FIELDNER-23-00035352
Brockton, Massachusetts	)	NAL/Acct. No.: 202432010006
	)	FRN: 0035338342

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024

Released: April 26, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$120,000 against Renold David a/k/a Reynold David (David) for operating an unauthorized radio station, known as “Lotnivo FM”, on 101.9 MHz (Station) in Brockton, Massachusetts, by which David apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on June 6, July 12, December 6, and December 21, 2023, resulting in four days of apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. *See* 47 CFR § 1.80(b)(9)(ii) (2019); *see also* *Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. *See* 47 U.S.C. § 511.

⁴ *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s* (continued....)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶ Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (*e.g.*, a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).⁷

3. The PIRATE Act, among other provisions, codified the definition of pirate radio,⁸ increased fines for pirate radio operators,⁹ and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.¹⁰

B. Factual Background

4. On June 6, 2023, field agents (Agents) from the FCC’s New York and Columbia Field Offices monitored the frequency 101.9 MHz in Brockton, Massachusetts, and, using direction-finding techniques, traced the source of the signal to { [REDACTED] } Florence Street, Brockton, Massachusetts (Florence Street Site).¹¹ The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.¹² A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Florence Street Site on any frequency. Agents also photographed a vehicle in the driveway of the Florence Street Site displaying decals advertising a radio station named Lotnivo FM.¹³ The vehicle was confirmed to be registered to David.

5. On July 12, 2023, Agents monitored the frequency 101.9 MHz in Brockton, Massachusetts, and, using direction-finding techniques, determined the source of the signal was the Florence Street Site. The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.¹⁴ Agents also spoke by telephone directly with David, who admitted to owning and operating Lotnivo FM. The Agents informed David that operation of Lotnivo FM was illegal and was to be halted immediately, and David agreed to

(Continued from previous page)

Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ *Id.* § 15.203.

⁸ 47 U.S.C. § 511(h).

⁹ *Id.* § 511(a)-(b).

¹⁰ *See* 47 U.S.C. § 511(a) (“Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.”) (emphasis added).

¹¹ Material set off by double brackets { [] } is confidential and is redacted from the public version of this document.

¹² 47 CFR § 15.239(b).

¹³ *See* Photographs of vehicle with Lotnivo FM advertising at Florence Street Site (on file in EB-FIELDNER-23-00035352).

¹⁴ 47 CFR § 15.239(b).

cease broadcasting the Station's signal. Agents then met David at the Florence Street Site, where he granted them access to the backyard. The Agents were able to identify the Station's antenna located in a tree, with connecting cable entering the residence through a dryer vent in the side wall.¹⁵ Agents determined that the antenna used a standard antenna jack or electrical connector and was, therefore, not compliant with the part 15 rules.¹⁶

6. On December 6 and December 21, 2023, an Agent conducted additional monitoring of the frequency 101.9 MHz in Brockton, Massachusetts, and, using direction-finding techniques, determined the source of the signal on both dates was the Florence Street Site. In addition, on December 21, 2023, the Agent took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's Rules.¹⁷ They also visually confirmed that the Station was still using the same non-part 15 compliant antenna that was observed on July 12, 2023.¹⁸

7. During the course of their investigation, Agents searched for websites related to David and Lotnivo FM. This search revealed the Station's website <https://lotnivofm.com/>, which contains: (a) photographs of David indicating he hosted three radio broadcasts in front of a wall sign advertising "Radio Lotnivo FM Est. May 05, 2019"; (b) a photograph showing "Radio Lotnivo FM" and "101.9"; and (c) a list of telephone contact numbers for the Station, including numbers for the "Studio" and "Director", for which David was listed in carrier records as the identified subscriber (i.e., the person to whom the number is assigned).¹⁹ In addition, a Facebook post from March 7, 2022, states that the Station is located at the Florence Street Site²⁰ and public property records identify David as the owner of that property.²¹

III. DISCUSSION

8. We find that David, in apparent violation of section 511 of the Act,²² willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of a pirate radio station, known as Lotnivo FM, on 101.9 MHz on June 6, July 12, December 6, and December 21, 2023. On each of these dates, Agents observed David's Station operating from the Florence Street Site on 101.9 MHz. A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Florence Street Site at any time relevant to the violations discussed in this NAL. On June 6, July 12, and December 21, 2023, Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.²³ Agents also determined that the antenna used to broadcast Lotnivo FM from the Florence Street Site on July 12 and December 21, 2023, was not compliant with the part 15 requirements,²⁴ and, by

¹⁵ See Photographs of exterior antenna cabling for Lotnivo FM at the Florence Street Site (on file in EB-FIELDNER-23-00035352).

¹⁶ 47 CFR § 15.203.

¹⁷ 47 CFR § 15.239(b).

¹⁸ See *supra* para. 5.

¹⁹ See Lotnivo FM, <https://www.lotnivofm.com/> (last visited Mar. 7, 2024).

²⁰ See City of Brockton, Facebook (entry dated March 7, 2022), <https://www.facebook.com/CityBrockton/posts/pfbid02oAgExuNWgbdUuCSsLMCJZvRFbKwMDB9QrFFMFDyWq5G7hL9TukNeSZWbZjskfbDXl> (last visited Mar. 7, 2024).

²¹ See City of Brockton, MA Assessor's Database, Residential Property Card for {[REDACTED]} Florence St., [https://brockton.s3.amazonaws.com/{\[REDACTED\]}](https://brockton.s3.amazonaws.com/{[REDACTED]}) (last visited Mar. 7, 2024).

²² 47 U.S.C. § 511.

²³ 47 CFR §§ 15.209(a), 15.239(b); see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

²⁴ 47 CFR § 15.203.

implication, the transmissions from the Florence Street Site observed on December 6, 2023, also failed to comply with part 15 of the Commission's rules.²⁵ Evidence collected by the Agents, including David's admission of owning and operating the Station, plus information from Station's website and social media posts, shows that David owned and operated Lotnivo FM.²⁶ Accordingly, the Commission finds that David's actions on June 6, July 12, December 6, and December 21, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.²⁷

A. Proposed Forfeiture

9. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."²⁸ In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁹ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.³⁰

10. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.³¹ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$115,802 for each day during which the offense occurs, but not more than \$2,391,097 in total.³²

11. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.³³ Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,³⁴ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the four days that David apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$80,000.³⁵

²⁵ *Id.*; see also 47 U.S.C. § 511(h).

²⁶ See *supra* paras. 4-7.

²⁷ 47 U.S.C. §§ 511(a), (h).

²⁸ 47 U.S.C. § 511(a).

²⁹ 47 CFR § 1.80(b)(11).

³⁰ *Id.*

³¹ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

³² See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

³³ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

³⁴ The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. See, e.g., *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

³⁵ See 47 U.S.C. § 511.

12. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,³⁶ we conclude that a significant upward adjustment is warranted based on David's intentional operation of Lotnivo FM after being notified of its illegality on July 12, 2023. Accordingly, we propose an upward adjustment of \$20,000 for each of the two days during which David operated his pirate radio station after being notified by agents that his operation was illegal, for a total penalty of \$120,000. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules, and the statutory factors, and consistent with the *Forfeiture Policy Statement*,³⁷ David is apparently liable for a proposed total monetary forfeiture of \$120,000.³⁸

IV. CONCLUSION

13. We have determined that Renold David apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023, July 12, 2023, December 6, 2023, and December 21, 2023. As such, Renold David is apparently liable for a forfeiture of \$120,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Renold David is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred twenty thousand dollars (\$120,000) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

15. **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, Renold David **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 18.

16. In order for Renold David to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, David shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/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:³⁹

- 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

³⁶ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

³⁷ See *id.*

³⁸ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

³⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters “FORF”. In addition, a completed Form 159⁴⁰ or printed CORES form⁴¹ 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).⁴² 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 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.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁴³ 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.

18. 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.⁴⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

⁴⁰ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁴¹ 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>.

⁴² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴³ See 47 CFR § 1.1914.

⁴⁴ *Id.* §§ 1.16, 1.80(g)(3).

19. 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.⁴⁵ 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.⁴⁶

20. **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 Renold David at {[REDACTED]} Florence Street, Brockton, MA 02301.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁵ 47 U.S.C. § 503(b)(2)(E).

⁴⁶ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Renold David, Brockton, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00035352 (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Djovany Pierre and Mario Turner	)	File No.: EB-FIELDNER-23-00035362
Brockton, Massachusetts	)	NAL/Acct. No.: 202432010007
	)	FRNs: 0035338201
	)	0035338268

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024

Released: April 26, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$40,000 against Djovany Pierre (Pierre) and Mario Turner (Turner), jointly and severally, for operating an unauthorized radio station, known as “Radio Tele Brockton” or “Brockton Heat”, on 96.5 MHz (Station) in Brockton, Massachusetts, by which Pierre and Turner apparently willfully and knowingly did or caused pirate radio broadcasting on June 6 and July 12, 2023, resulting in two days of apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also* *Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. *See* 47 U.S.C. § 511.

inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

3. The PIRATE Act, among other provisions, codified the definition of pirate radio,⁷ increased fines for pirate radio operators,⁸ and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.⁹

B. Factual Background

4. On June 6, 2023, field agents (Agents) from the FCC’s New York and Columbia Field Offices monitored the frequency 96.5 MHz in Brockton, Massachusetts, and, using direction-finding techniques, traced the source of the signal to the JP Variety Store at 673 North Main Street, Brockton, Massachusetts (North Main Street Site). The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.¹⁰ Agents listened to and recorded the audio programming on 96.5 MHz, which identified the Station as “Radio Tele Brockton 96.5.”¹¹ A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the North Main Street Site on any frequency.

5. On July 12, 2023, Agents again monitored the frequency 96.5 MHz in Brockton, Massachusetts, and using direction-finding techniques traced the source of the signal to the North Main Street Site. The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.¹² The Agents heard the Station identified over the air as “Brockton Heat.” In addition to transmitting on the same frequency from the same location, the Brockton Heat website, www.brocktonheat.com, confirmed that Brockton Heat and Radio Tele Brockton are the same station.¹³ The Agents determined that the programming on 96.5 MHz was an

⁴ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ 47 U.S.C. § 511(h).

⁸ *Id.* § 511(a)-(b).

⁹ See 47 U.S.C. § 511(a) (“Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.”) (emphasis added).

¹⁰ 47 CFR § 15.239(b).

¹¹ See Audio recording of June 6, 2023 broadcast from North Main Street Site (on file in EB-FIELDNER-23-00035362).

¹² 47 CFR § 15.239(b).

¹³ See <https://www.brocktonheat.com> (displaying the name “Radio TeleBrockton” and the e-mail address radiotelebrockton@gmail.com) (last visited Jan. 30, 2024). The Radio Tele Brockton Facebook page also includes the same e-mail address as <https://www.brocktonheat.com>. See Radio Tele Brockton, Facebook, <https://www.facebook.com/radiotelebrocktonlive> (last visited Jan. 30, 2024).

exact match for the audio on the Station's TuneIn internet stream.¹⁴ Agents then entered the business at the North Main Street Site and asked to speak with the owner. An employee told them the owner was Djovany Pierre, and gave them Pierre's business card listing his name and the phone number 508-232-86{[REDACTED]}.¹⁵

6. While searching for websites and social media related to Radio Tele Brockton / Brockton Heat in June and July 2023, Agents found an Instagram account for Radio Tele Brockton listing the name Djovany Pierre and the Station's website address, <https://www.brocktonheat.com>.¹⁶ This website lists the Station's administration number as 508-232-86{[REDACTED]},¹⁷ which is the same number on Pierre's business card and the same number for JP Realty & Associates Inc.,¹⁸ another business registered to Pierre.¹⁹ JP Realty & Associates Inc is listed in carrier records as the subscriber (i.e., the person to whom the number is assigned) for this phone number, as well as for the Station's studio number, 508-580-19{[REDACTED]}, also listed on the Station's website.²⁰ The Agents contacted Pierre on the Station's administration phone number on July 12, 2023. Pierre informed the Agents that he would shut down the Station and gave the Agents permission to access the antenna located atop the JP Variety Store on the North Main Street Site, where they found a coaxial cable leading from the pole-mounted antenna to a locked room below his store. While exiting the North Main Street Site, the Agents interviewed two individuals from an adjoining business about the Station, one of whom stated that the Station had been operating for multiple years.

7. In a follow-up call with the Agents on July 12, 2023, Pierre admitted that he knew the Station had been operating for about one year. Notwithstanding the Station's use of two telephone numbers associated with his real estate company,²¹ and his stated willingness—and apparent ability—to shut the Station down,²² Pierre denied any involvement in the Station's operation.²³ Pierre claimed he had rented a room at the North Main Street Site to Turner, whom he identified as the Station's operator. The Agents' investigation of Turner discovered a LinkedIn page wherein he referred to himself as a "self-employed broadcast engineer" operating a company called KMX Electronics.²⁴ A banner reading "2023 KMX Electronics" is displayed at the bottom of the Station's website,²⁵ and Turner is listed in carrier

¹⁴ See Video comparison of Station's over-the-air transmission and internet stream, <https://tunein.com/radio/Brockton-Heat-s280979>, on July 12, 2023 (on file in EB-FIELDNER-23-00035362).

¹⁵ Material set off by double brackets {[REDACTED]} is confidential and is redacted from the public version of this document.

¹⁶ See Instagram, Radio Tele Brockton, https://www.instagram.com/radio_tele_brockton (last visited Jan. 10, 2024) (on file in EB-FIELDNER-23-00035362).

¹⁷ See Radio Tele Brockton, <https://www.brocktonheat.com> (last visited Jan. 10, 2024) (on file in EB-FIELDNER-23-00035362).

¹⁸ See JP Realty & Associates, Inc., <https://jprealty.com/index.html> (last visited Dec. 26, 2024). This website has been recently taken down, but can be found archived at <https://web.archive.org/web/20231226030145/http://www.jprealty.com/>.

¹⁹ See Secretary of the Commonwealth of Massachusetts, Corporations Division, Business Entity Summary J P Realty & Associates Inc, <https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?sysvalue=UEt7Y00Tbm0Stiv2XKIrvPNQ20uvzfaQKnu3XB8ip.g-> (last visited Jan. 10, 2024).

²⁰ See Radio Tele Brockton website, <https://www.brocktonheat.com/> (last visited Jan. 10, 2024) (on file in EB-FIELDNER-23-00035362).

²¹ See *supra* para. 6.

²² *Id.*

²³ A screenshot image taken of Pierre's Facebook account in 2018 lists him as "Manager Radio Tele Brockton." See Image on file in EB-FIELDNER-23-00035362.

²⁴ See LinkedIn, Mario Turner, <https://www.linkedin.com/in/mario-turner-kmx/> (last visited Jan. 10, 2024).

²⁵ See Radio Tele Brockton website, <https://www.brocktonheat.com/> (last visited Jan. 10, 2024).

records as the subscriber of the phone number for KMX Electronics, (508) 577-96[REDACTED].²⁶ This same phone number is also listed as the engineering contact number on the Station's website.²⁷

III. DISCUSSION

8. We find that Pierre and Turner, in apparent violation of section 511 of the Act,²⁸ willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 96.5 MHz, known as "Radio Tele Brockton" and "Brockton Heat," on June 6 and July 12, 2023. On both of these dates, Agents observed Pierre and Turner's Station operating at the North Main Street Site on 96.5 MHz. Agents performed field strength measurements on both dates and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.²⁹ A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the North Main Street Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents, including Pierre's admitted knowledge of and business relationship with the Station, plus information from the Station's website and social media posts, shows that Pierre and Turner jointly operated the Station.³⁰ Accordingly, the Commission finds that Pierre and Turner's actions on June 6 and July 12, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act on a joint and several basis.³¹

A. Joint and Several Liability

9. As discussed above, we find that Pierre and Turner are each apparently liable for willfully and knowingly doing, causing, or suffering to be done pirate radio broadcasting under section 511. The Commission has found in previous enforcement cases that joint and several liability is warranted where more than one party was responsible for a particular violation.³² We find that such apparent joint and several liability is appropriate here in light of Pierre and Turner's support of, and participation in, the unauthorized station at issue.

B. Proposed Forfeiture

10. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio

²⁶ The KMX Electronics phone number is listed on the KMX Electronics Facebook page. See KMX Electronics, Facebook, <https://www.facebook.com/kmxelectronics> (last visited Jan. 10, 2024).

²⁷ See Radio Tele Brockton website, <https://www.brocktonheat.com/> (last visited Jan. 10, 2024).

²⁸ 47 U.S.C. § 511.

²⁹ 47 CFR §§ 15.209(a), 15.239(b); see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.").

³⁰ See *supra* paras. 4-7. Although we consider Pierre to be a joint operator of the Station, his June 12, 2023 statement to Agents, at a minimum, constitutes an admission that he was "suffering to be done" pirate radio broadcasting within the meaning of section 511 of the Act. See 47 U.S.C. § 511(a), (h). Specifically, Pierre admitted that he knew the Station had been operating from the North Main Street Site for about a year, claimed he had the ability to halt Station operations, and offered to do so. See *supra* para. 7.

³¹ 47 U.S.C. § 511(a), (h).

³² *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, FL*, Forfeiture Order, 33 FCC Rcd 6852 (2018); *Telseven, LLC and Patrick B. Hines*, Forfeiture Order, 31 FCC Rcd 1639 (2016); *Scott Malcolm*, Forfeiture Order, 31 FCC Rcd 1652 (2016). Such liability "may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation." *Andre Alleyne, Jesse White*, Forfeiture Order, 26 FCC Rcd 10372, 10374, para. 8 (EB 2011).

broadcasting.”³³ In exercising our forfeiture authority, we consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³⁴ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.³⁵

11. Section 511 of the Act and section 1.80 of the Commission’s rules authorize enhanced penalties for pirate radio broadcasting.³⁶ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.³⁷

12. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.³⁸ Accordingly, in 2023 the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,³⁹ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the two days that Pierre and Turner apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$40,000.⁴⁰ In applying the applicable statutory factors, we consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission’s rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,⁴¹ Pierre and Turner are apparently jointly and severally liable for a proposed total monetary forfeiture of \$40,000.⁴²

IV. CONCLUSION

13. We have determined that Djovany Pierre and Mario Turner apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the

³³ 47 U.S.C. § 511(a).

³⁴ 47 CFR § 1.80(b)(11).

³⁵ *Id.*

³⁶ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

³⁷ 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

³⁸ *See* S. Rep. No. 116-178, 1 (2019) (“The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.”).

³⁹ The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. *See, e.g., César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff’d*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff’d*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

⁴⁰ *See* 47 U.S.C. § 511.

⁴¹ *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

⁴² Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

Act on June 6, 2023 and July 12, 2023. As such, Djovany Pierre and Mario Turner are apparently jointly and severally liable for a forfeiture of \$40,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Djovany Pierre and Mario Turner are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty thousand dollars (\$40,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

15. **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, Djovany Pierre and Mario Turner **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 18.

16. In order for Djovany Pierre and Mario Turner to pay the proposed forfeiture, they shall notify the Office of the Field Director at field@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Pierre and Turner shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/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:⁴³

- 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 159⁴⁴ or printed CORES form⁴⁵ 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).⁴⁶ 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

⁴³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁴⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁴⁵ 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>.

⁴⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

the NAL Acct. No. with the first two digits excluded (*e.g.*, NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.

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

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁴⁷ 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.

18. 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.⁴⁸ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

19. 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.⁴⁹ 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.⁵⁰

⁴⁷ See 47 CFR § 1.1914.

⁴⁸ *Id.* §§ 1.16, 1.80(g)(3).

⁴⁹ 47 U.S.C. § 503(b)(2)(E).

⁵⁰ 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).

20. **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 Djovany Pierre and Mario Turner at 673 North Main Street, Brockton, MA 02301 and Mario Turner at {[REDACTED]} Dover St., Brockton, MA 02301.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Djovany Pierre and Mario Turner, Brockton, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00035362; (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Joao Vieira	)	File No.: EB-FIELDNER-23-00035360
Brockton, Massachusetts	)	NAL/Acct. No.: 202432010008
	)	FRN: 0035338326

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024

Released: April 26, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$40,000 against Joao Vieira (Vieira) for operating an unauthorized radio station, known as “Brockton FM”, on 102.1 MHz (Station) in Brockton, Massachusetts, by which Vieira apparently willfully and knowingly did or caused pirate radio broadcasting on June 6 and July 12, 2023, resulting in two days of apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. *See* 47 CFR § 1.80(b)(9)(ii) (2019); *see also* *Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. *See* 47 U.S.C. § 511.

⁴ *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s* (continued....)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

B. Factual Background

3. On June 6, 2023, field agents (Agents) from the FCC’s New York and Columbia Field Offices, monitored the frequency 102.1 MHz and, using direction-finding techniques, traced the source of the signal to { } Sheppard Avenue, Brockton, Massachusetts (Sheppard Avenue Site).⁷ The Agents took field strength measurements of the station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules.⁸ The Agents listened to and recorded the audio programming on 102.1 MHz and heard the station identify itself as “Brockton FM.”⁹ A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Sheppard Avenue Site on any frequency.

4. On July 12, 2023, Agents again monitored the frequency 102.1 MHz in Brockton, Massachusetts, and, using direction-finding techniques, traced the source of the signal to the Sheppard Avenue Site. Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.¹⁰ The Agents listened to the audio programming on 102.1 MHz and heard the Station identified as “Brockton FM.”

5. On the same day, Agents visited the Sheppard Avenue Site and sought permission for an inspection. The person who greeted them facilitated a phone conversation with her husband, who introduced himself as Joao “John” Vieira. Vieira acknowledged his operation of the Station without authorization for the past 6-8 months. He also directed the Agents to the Station’s website, www.brocktonfm.com. The “About us” page on the Brockton FM website lists Joao Vieira as the Station’s director.¹¹

III. DISCUSSION

6. We find that Vieira, in apparent violation of section 511 of the Act,¹² willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 102.1 MHz, known as “Brockton FM”, on June 6 and July 12, 2023. On both of these dates, Agents observed Vieira’s Station operating at the Sheppard Avenue Site on 102.1 MHz. Agents performed field strength measurements and determined that these transmissions exceeded the

(Continued from previous page) _____

Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter (“µV/m”) at 3 meters).

⁷ Material set off by double brackets { } is confidential and is redacted from the public version of this document.

⁸ *Id.*

⁹ July 6, 2023 Recordings on file EB-FIELDNER-23-00035360.

¹⁰ *Id.*

¹¹ Brockton FM, About us, <https://www.brocktonfm.com/aboutus> (last visited Jan. 10, 2024).

¹² 47 U.S.C. § 511.

limits for operation under part 15 of the Commission's rules.¹³ A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Sheppard Avenue Site at any time relevant to the violations discussed in this NAL. Vieira admitted to Agents that he was the operator of the Station and provided a link to the Station's website, which stated that he was the Station's director.¹⁴ Accordingly, the Commission finds that Vieira's actions on June 6 and July 12, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.¹⁵

A. Proposed Forfeiture

7. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."¹⁶ In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁷ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹⁸

8. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.¹⁹ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.²⁰

9. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.²¹ Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,²² which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of the two days that Vieira apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$40,000.²³

¹³ 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.").

¹⁴ *See supra* para.5.

¹⁵ 47 U.S.C. § 511(a), (h).

¹⁶ *Id.* § 511(a).

¹⁷ 47 CFR § 1.80(b)(11).

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

²⁰ *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

²¹ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

²² The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. *See, e.g., César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

²³ *See* 47 U.S.C. § 511.

10. In applying the statutory factors, we also consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,²⁴ Vieira is apparently liable for a proposed total monetary forfeiture of \$40,000.²⁵

IV. CONCLUSION

11. We have determined that Joao Vieira apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023, and July 12, 2023. As such, Vieira is apparently liable for a forfeiture of \$40,000.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Joao Vieira is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty thousand dollars (\$40,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Joao Vieira **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 16.

14. In order for Joao Vieira to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Vieira shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/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:²⁶

- 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 159²⁷ or printed CORES form²⁸ 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

²⁴ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

²⁵ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

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

²⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁸ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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

15. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.³¹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.³² 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

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 47 CFR § 1.1914.

³¹ *Id.* §§ 1.16, 1.80(g)(3).

³² 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³³

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Joao Vieira at his last known address of {[REDACTED]} Sheppard Avenue, Brockton, Massachusetts, 02301.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Joao Vieira, Brockton, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00035360; (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Robert Bellinger	)	File No.: EB-FIELDNER-21-00031914
Cotuit, Massachusetts	)	NAL/Acct. No.: 202432010009
	)	FRN: 0035338359

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024**Released: April 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$40,000 against Robert Bellinger (Bellinger) for operating an unauthorized radio station, known as “Three Bays Radio”, on 93.1 MHz (Station) in Cotuit, Massachusetts, by which Bellinger apparently willfully and knowingly did or caused pirate radio broadcasting on June 6 and July 11, 2023, resulting in two days of apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND**A. Legal Framework**

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. See 47 CFR § 1.80(b)(9)(ii) (2019); see also *Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. See 47 U.S.C. § 511.

⁴ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s* (continued....)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

B. Factual Background

3. On February 24, 2023, a complaint was received alleging that a station identifying itself as TBR Radio was operating on 93.1 MHz in Cotuit, Massachusetts. On June 6, 2023, field agents (Agents) from the FCC’s Columbia and Boston Field Offices, using direction-finding techniques, traced the source of radio transmissions on 93.1 MHz to a residence located at {[REDACTED]} Mariner Circle in Cotuit, Massachusetts (Mariner Circle Site).⁷ The Agents took field strength measurements of the Station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules.⁸ In social media posts Bellinger has identified the operation as TBR Radio, TBR, and Three Bays Radio.⁹

4. On July 11, 2023, the Agents again traced the source of radio transmissions on 93.1 MHz to the Mariner Circle Site, took field strength measurements, and determined that the Station’s signal strength exceeded the limits for operation under part 15 of the Commission’s rules.¹⁰ The Agents then approached the residence, where Bellinger identified himself and permitted the Agents to inspect the Station. Bellinger voluntarily turned off the transmitter and admitted to the Agents that he had been operating for about three years. The Agents also determined through public records that Bellinger is the owner of the Mariner Circle Site where the Station is located.¹¹ Social media posts also confirm Bellinger’s connection with the Station.¹²

III. DISCUSSION

5. We find that Bellinger, in apparent violation of section 511 of the Act¹³, willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through operation of an

(Continued from previous page)

Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

⁸ Section 15.239 of the Commission’s rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter (“µV/m”) at three meters. 47 CFR § 15.239(b).

⁹ *See infra* note 12.

¹⁰ *Id.*

¹¹ Town of Barnstable, Assessing Division, Property Card for the Mariner Circle Site, [https://townofbarnstable.us/PropertyRecordCards/{\[REDACTED\]}](https://townofbarnstable.us/PropertyRecordCards/{[REDACTED]}) (last visited Jan. 9, 2024).

¹² Bellinger’s Facebook page includes an image with captions reading “Three Bays Radio TBR 93.1 FM” across the top and “Cape Cods Doo-Wop & Oldies Staton” across the bottom. <https://www.facebook.com/photo.php?fbid=10224117632623598&set=pb.1083883496.-2207520000.&type=3> (last visited on Dec. 27, 2023). The same image also appears on a separate Facebook page for Three Bays Radio. <https://www.facebook.com/TBRadio93.1FM/photos/a.102402055607501/102402038940836> (last visited on Dec. 27, 2023).

¹³ 47 U.S.C. § 511.

unlicensed station on 93.1 MHz, known as Three Bays Radio, on June 6 and July 11, 2023. On both of these dates, Agents observed Bellinger's Station operating on 93.1 MHz at the Mariner Circle Site. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.¹⁴ A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Mariner Circle Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Bellinger is the owner and operator of the Station, and Bellinger admitted this to Agents during an on-site inspection of the Station.¹⁵ Accordingly, the Commission finds that Bellinger's actions on June 6 and July 11, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.¹⁶

A. Proposed Forfeiture

6. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."¹⁷ In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁸ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹⁹

7. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.²⁰ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.²¹

8. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.²² Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,²³ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for each of

¹⁴ 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

¹⁵ *See supra* para. 4.

¹⁶ 47 U.S.C. § 511(a), (h).

¹⁷ 47 U.S.C. § 511(a).

¹⁸ 47 CFR § 1.80(b)(11).

¹⁹ *Id.*

²⁰ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

²¹ *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

²² *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

²³ The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. *See, e.g., César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

the two days that Bellinger apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$40,000.²⁴

9. In applying the applicable statutory factors, we also consider whether there is any basis for an upward or a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Bellinger is apparently liable for a proposed total monetary forfeiture of \$40,000.²⁵

IV. CONCLUSION

10. We have determined that Robert Bellinger, apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023, and July 11, 2023. As such, Robert Bellinger, is apparently liable for a forfeiture of \$40,000.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Robert Bellinger, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty thousand dollars (\$40,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Robert Bellinger, **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 15.

13. In order for Robert Bellinger to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Bellinger shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/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:²⁶

- 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 159²⁷ or printed CORES form²⁸ 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

²⁴ See 47 U.S.C. § 511.

²⁵ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

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

²⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁸ 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>.

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).²⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.³⁰ 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.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.³¹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at <mailto:field@fcc.gov>.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 47 CFR § 1.1914.

³¹ *Id.* §§ 1.16, 1.80(g)(3).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 CFR § 503(b)(2)(E) support that result.³²

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Robert Bellinger, at {{[REDACTED]}} Mariner Circle, Cotuit, Massachusetts 02635.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Robert Bellinger, Cotuit, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-21-00031914 (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Shane Kelly	)	File No.: EB-FIELDNER-23-00034960
Hyannis, Massachusetts	)	NAL/Acct. No.: 202432010010
	)	FRN: 0035338375

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2024

Released: April 26, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$20,000 against Shane Kelly (Kelly) for operating an unauthorized radio station, known as “The Test”, on 87.9 MHz (Station) in Hyannis, Massachusetts, by which Kelly apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting on June 6, 2023. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act),¹ and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.² Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.³ Both of these figures are subject to annual inflation adjustments.⁴ Section 511 defines pirate radio broadcasting as “the transmission of

¹ 47 U.S.C. § 511.

² *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

³ 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was \$151,005. See 47 CFR § 1.80(b)(9)(ii) (2019); see also *Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of \$151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to \$2,000,000. See 47 U.S.C. § 511.

⁴ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (continued....)

communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.⁶

B. Factual Background

3. On June 6, 2023, field agents (Agents) from the FCC’s Boston Field Office (Boston Office) monitored the frequency 87.9 MHz in Hyannis, Massachusetts, and, using direction-finding techniques, traced the source of the signal to { [REDACTED] } Lincoln Road, Hyannis, Massachusetts (Lincoln Road Site).⁷ The Agents took field strength measurements of the signal and determined that it exceeded the limits for operation under part 15 of the Commission’s Rules.⁸ Agents again heard the Station identified as “87.9 The Test.” A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Lincoln Road Site on any frequency. Agents later consulted public records and discovered that Kelly was the owner of the home located at the Lincoln Road Site.⁹

4. On July 11, 2023, Agents spoke with Kelly at the Lincoln Road Site. At the time of the Agents’ visit to the Lincoln Road Site, the Station was not operating. Kelly acknowledged operating the Station on 87.9 FM. He said he has been intermittently operating an FM station as a hobby and admitted he did not have a license to operate a radio station on any frequency. On December 12, 2023, Agents from the Boston Office monitored the frequency 87.9 MHz and observed no broadcasts on this frequency. The Agents determined that no broadcast signals were coming from the Lincoln Road Site on any other frequency.

III. DISCUSSION

5. We find that Kelly, in apparent violation of section 511 of the Act,¹⁰ willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting through the operation of an unlicensed radio station on 87.9 MHz, known as “The Test”, on June 6, 2023. On this date, Agents observed Kelly’s Station operating at the Lincoln Road Site on 87.9 MHz. Agents performed field strength measurements and determined that the transmissions exceeded the limits for operation under part 15 of the Commission’s rules.¹¹ A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Lincoln Road Site at any time relevant to the violations discussed in this NAL. In an interview with Agents, Kelly admitted to being operator of the Station.¹²

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(EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ Material set off by double brackets { [REDACTED] } is confidential and is redacted from the public version of this document.

⁸ *Id.*

⁹ Town of Barnstable, Assessing Division, Property Card for the Lincoln Road Site, [https://townofbarnstable.us/PropertyRecordCards/{ \[REDACTED\] }](https://townofbarnstable.us/PropertyRecordCards/{ [REDACTED] }) (last visited Jan. 10, 2024).

¹⁰ 47 U.S.C. § 511.

¹¹ 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

¹² *See supra* para.4.

Accordingly, the Commission finds that Kelly's actions on June 6, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.¹³

A. Proposed Forfeiture

6. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."¹⁴ In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁵ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹⁶

7. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.¹⁷ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$119,555 for each day during which the offense occurs, but not more than \$2,391,097 in total.¹⁸

8. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.¹⁹ Accordingly, in 2023, the Commission established a base forfeiture of \$20,000 for pirate radio broadcasting,²⁰ which is twice the pre-PIRATE Act base forfeiture level. Consequently, for the day that Kelly apparently willfully and knowingly violated section 511 of the Act, we apply this base forfeiture amount, for a total proposed base forfeiture of \$20,000.²¹

9. In applying the applicable statutory factors, we also consider whether there is any basis for an upward or downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,²² Kelly is apparently liable for a proposed total monetary forfeiture of \$20,000.²³

¹³ 47 U.S.C. § 511(a), (h).

¹⁴ *Id.* § 511(a).

¹⁵ 47 CFR § 1.80(b)(11).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

¹⁸ See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,391,097 and 47 U.S.C. § 511(b) at \$119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *7 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024, as the effective date for the increases).

¹⁹ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

²⁰ The Commission first applied this base forfeiture amount in prior Notices of Apparent Liability for Forfeiture for pirate radio activities. See, e.g., *César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-80, 2023 WL 6843186 (Oct. 13, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023), *aff'd*, Forfeiture Order, FCC 23-79, 2023 WL 6843178, at *1 (Oct. 13, 2023).

²¹ See 47 U.S.C. § 511.

²² See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

IV. CONCLUSION

10. We have determined that Shane Kelly apparently willfully and knowingly did, caused, or suffered to be done pirate radio broadcasting in violation of section 511 of the Act on June 6, 2023. As such, Shane Kelly is apparently liable for a forfeiture of \$20,000.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Shane Kelly is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful and knowing violation of section 511 of the Act, 47 U.S.C. § 511.

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Shane Kelly **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 15.

13. In order for Shane Kelly to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Kelly shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/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:²⁴

- 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 159²⁵ or printed CORES form²⁶ 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).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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²³ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

²⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

²⁵ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

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

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.²⁸ 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.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.²⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.³⁰ 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.³¹

²⁸ See 47 CFR § 1.1914.

²⁹ *Id.* §§ 1.16, 1.80(g)(3).

³⁰ 47 U.S.C. § 503(b)(2)(E).

³¹ 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,

(continued....)

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Shane Kelly, {{[REDACTED]}} Lincoln Road, Hyannis, Massachusetts, 03601.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Shane Kelly, Hyannis, Massachusetts*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-23-00034960 (April 25, 2024)

For nine decades, the Federal Communications Commission has been our Nation's watchdog when it comes to the use of the public airwaves. We take this responsibility seriously. It means that this resource is broadly available for all kinds of radio and wire activities, provided those who use our airwaves comply with our rules. When users fail to do so and cause harmful interference to others, we take action. That is exactly what we do today with these fines proposed against unauthorized radio operators in Massachusetts.

Thank you to the agents and Field Regional Management in our Boston and New York Field Offices for their work on this effort under the PIRATE Act. These agents are unsung heroes who help us manage our airwaves, and for their security we do not mention them here today but want them to know we are grateful for their service. I will mention, however, those who took up their charge in Washington, so thank you to Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, Andrew Leja, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Federal State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Federal State Joint Board on Jurisdictional Separations	)	CC Docket No. 80-286
	)	
	)	

ORDER

Adopted: May 1, 2024**Released: May 2, 2024**

By the Commission:

1. Pursuant to sections 254(a)(1) and 410 of the Communications Act of 1934, as amended,¹ the Commission appoints the Honorable Mary Pat Regan, Commissioner, Kentucky Public Service Commission, to serve on the Federal-State Joint Board on Universal Service (Universal Service Joint Board).² This appointment fills the position recently vacated by the Honorable Brandon Presley, Commissioner, Mississippi Public Service Commission. The Commission gratefully acknowledges the contributions of Commissioner Presley to the work of the Universal Service Joint Board.

2. In addition, the Commission appoints the Honorable Karen Charles, Commissioner, Massachusetts Department of Telecommunications and Cable, the Honorable Mary Pat Regan, Commissioner, Kentucky Public Service Commission, the Honorable Maida J. Coleman, Commissioner, Missouri Public Service Commission, and the Honorable Steven M. DeFrank, Chairman, Pennsylvania Public Utility Commission, to the Federal-State Joint Board on Jurisdictional Separations (Separations Joint Board).³

3. Commissioner Charles's appointment fills the position recently vacated by the Honorable Sarah D. Hofmann, Commissioner, Vermont Public Utility Commission.⁴ Commissioner Regan's appointment fills the position recently vacated by the Honorable Travis Kavulla, Commissioner, Montana Public Service Commission. Commissioner Coleman's appointment fills the position recently vacated by

¹ 47 U.S.C. §§ 254(a)(1), 410.

² The National Association of Regulatory Utility Commissioners (NARUC) nominated Mary Pat Regan to serve as a member of the Universal Service Joint Board. *See* Letter from James Bradford Ramsay, General Counsel, NARUC, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, CC Docket No. 96-45 (Mar. 15, 2024).

³ NARUC nominated Karen Charles, Mary Pat Regan, Maida J. Coleman, and Steven M. DeFrank to serve as members of the Separations Joint Board. *See* Letter from James Bradford Ramsay, General Counsel, NARUC, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, CC Docket No. 80-286 (Mar. 15, 2024); Letter from James Bradford Ramsay, General Counsel, NARUC, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, CC Docket No. 80-286 (Apr. 9, 2024).

⁴ The Vermont Public Utility Commission was formerly known as the Vermont Regulatory Board. *See* Vermont Public Utility Commission, Report to the Vermont Legislature: Increasing Ease of Citizen Participating in Public Utility Commission Proceedings at 2, n.2 (Dec. 14, 2017), https://puc.vermont.gov/sites/psbnew/files/doc_library/report-to-legislature-on-act-174-working-group-recommendations_0.pdf (noting the effective date of the name change was July 1, 2017).

the Honorable Wendy M. Moser, Commissioner, Colorado Public Utilities Commission. Commissioner DeFrank's appointment fills the position recently vacated by the Honorable John Gavin, Commissioner, Colorado Public Utilities Commission. The Commission gratefully acknowledges the contributions of Commissioner Hofmann, Commissioner Kavulla, Commissioner Moser, and Commissioner Gavin to the work of the Separations Joint Board.

4. Henceforth, a copy of all filings in Universal Service Joint Board proceedings shall be served on Commissioner Regan at the following address:

The Honorable Mary Pat Regan
Kentucky Public Service Commission
211 Sower Boulevard
Frankford, Kentucky 40601
Mary.Regan@ky.gov

5. Henceforth, a copy of all filings in Separations Joint Board proceedings shall be served on Commissioners Regan, Charles, Coleman and DeFrank at the following addresses:

The Honorable Mary Pat Regan
Kentucky Public Service Commission
211 Sower Boulevard
Frankford, Kentucky 40601
Mary.Regan@ky.gov

The Honorable Karen Charles
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, Massachusetts 02118
Karen.Charles@mass.gov

The Honorable Maida J. Coleman
Missouri Public Service Commission
200 Madison Street
Governor Office Building
Jefferson City, Missouri 65101
Maida.Coleman@psc.mo.gov

The Honorable Steven M. DeFrank
Pennsylvania Public Utility Commission
Keystone Building
400 North Street
Harrisburg, PA 17120
smd@pa.gov

6. Accordingly, IT IS ORDERED that, pursuant to sections 254(a)(1) and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254(a)(1), 410, this order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary